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PRACTICAL TREATISE

ON THE

LAW OF ELECTIONS,

RELATING TO

ENGLAND, SCOTLAND,

AND

IRELAND.

By WILLIAM THOMAS ROE, Esq. of lincoln's-inn, barrister-at-law.

IN TWO VOLUMES.

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ADVERTISEMENT.

the collection of election statutes. The report of the case of Sandwich, 1808, which is inserted in the second chapter, is the only one of which the author is aware, upon a point which is very generally important.

LINCOLN'S-INN, Jan. 30th, 1819.

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LAW OF ELECTIONS.

PART III.

CHAPTER I.

OF THE JURISDICTION FOR THE TRIAL OF MATTERS RESPECTING ELECTIONS.

SECTION 1. Of the jurisdiction for the trial of controverted elections, controverted rights of election, or controverted rights of appointment of returning officers.

Section 2. In what cases resort may or may not be had to such jurisdiction.

SECTION 3. Scotland.

SECTION 4. Ireland.

THE matters which belong to the execution of the writ or precept, and therein to the province of a returning officer, have now been detailed. It is impossible but that in proceedings of such a nature, frauds, irregularities and accidents should oftentimes arise, by the effect of which the intention of the law may be wholly or partially defeated, notwithstanding its precautionary provisions.

Sect. 1.

It is therefore next to be considered in what quarter, and by what means redress may be had, where there is any ground of complaint, and generally what course is to be pursued with a view to such redress.

In the earlier instances of questions upon contested elections, there was no settled tribunal loug. 5, 9, for their decision. They were determined sometimes by the lords in parliament, and sometimes in Westminster Hall. By degrees however, as a seat in the lower house became more and more an object of ambition, contested elections were in consequence more frequent; and the commons at length began to feel, and dared to assert their independence(a). They could no longer endure Doug. 10.78. that the upper house should decide upon the right of sitting in theirs, and they were equally unwilling that the judges in Westminster Hall should exercise this jurisdiction, they being men in those times exposed to the influence of the crown, and removable from their places at its pleasure.

> It had been urged, that, the writ issuing out of chancery, and being returnable there, matters of

(a) The history of the Glanville's Reports, and in the former methods of trying Introduction to Lord Glenbervie's Reports, 1 Doug. 10. 14. and notes I. and K.

cases of controverted elections, is traced in chronological order in the preface to

this sort were properly cognizable in that court. However, notwithstanding repeated attempts to the contrary, both towards the end of queen Elizabeth's reign, and in the beginning of that of James the first, the commons were able to establish their exclusive right of trying cases of controverted elections, and which right they have maintained and enjoyed now for two centuries past, regarding with the greatest jealousy any thing like an infringement upon it (a). course they adopted, when they determined to insist upon their jurisdiction in these matters, was to select from the body of the house a certain number of such men as were distinguished for talents and integrity, under the name of a committee of privileges; and before them, these cases were agitated.

There seems to have been a standing committee of privileges and elections in 1588 (b). D'Ewes, 431 And on the 22d March, 1603, which was in the beginning of the first parliament of James the first, 1 Journ. 14 a committee of privileges and returns was appointed(c) consisting of twenty-five members,

(a) The anxiety of the house upon this point, appears in their resolutions of 26 Jan. 1703, upon the occasion of the proceedings in the cases of Ashby v. White, and Barnardiston v. Soames, for which see 1 vol. 478.

- , (b) See the entry of 25 Feb. in that year, as to the return for New Rumney. D'Ewes, 438.
- (c) This committee was instructed to examine all matters questionable touching privileges and returns,

These refers, though the

er is not chro-

ngically right,

accurate.)

and this was then said to be, "an usual motion " in the beginning of every parliament."

The practice of appointing such committees (a),

and to acquaint the house with their proceedings, from time to time, so as order might be taken according to the occasion, and agreeable with ancient custom and This was at the precedent. time of the affair of Sir Francis Goodwin, see 1 vol. 352.

(a) The number of members put upon these committees varied, according to the pleasure of the house,

upon the nomination.

22 March, 1603. A committee of privileges and returns was appointed, consisting of all the privy council being members of the house, and twenty-four other members, 1 Journ. 934.*

2 March, 1623. A committee was appointed of twenty-one, and all that would come were to have voice, 1

Journ. 829. *

20 March, 1627. A committee of elections and privileges was appointed of eighty-six, 1 Journ. 873.*

On the 11 May, 1661. A committee of elections and privileges was appointed amounting to between two and three hundred, 8 Journ.

30 Oct. 1673. Upon the appointment of a committee of elections, and privileges, it was part of the order, after the appointment of several members by name, "that all that come should have voices," 9 Journ. 284. This order was always repeated afterwards, when the committee was named, 1 Doug. 74.

27 Jan. 1707. A committee was appointed to consider of methods for the more speedy and easy trying and determining of controverted elections, to which all the gentlemen of the long robe were added, 15 Journ. 516.

18 Feb. 1707. They reported, 1. that it was their opinion, that all matters that should come in question, touching returns or elections. should be heard at the bar of the house.

2. And that all questions at the trial of elections should. if any member should insist upon it, be determined by ballot. The house agreed, and ordered that these resolutions should be standing orders. Ibid. 551.

21 Feb. 1707. Several standing orders were made for regulating the manner of balloting. Ibid. 559. cordingly, in the same session. the merits of the election for Ashburton, 26 Feb. 1707.

were heard at the bar, and

246, 247.

at the beginning of every session, continued until the 10th year of Geo. 3. with the exception of the session which commenced on the 16 Nov. 1708, when, instead of the usual committee of privileges and elections, a committee of privileges only was chosen on the 22nd Nov. and all 16 Journ. 6 election causes during that session were tried at the bar of the house. However, notwithstanding the appointment of committees whose province it ordinarily was to try election questions, they were nevertheless sometimes tried by ballot; and very frequently at the bar of the house, on motion made for that purpose (a). And in the two sessions which immediately preceded that in which the Grenville act passed, they were See the Jour almost all so heard.

nals about ti period, *passi*s 32 Journ. 19 to 454.

the right of election coming in question, the ballot was demanded, and the case determined in that manner, 15 Journ. 577, (where there is an exact account of the way in which the ballot was taken.)

But it appears, that this was the only case so determined, and on the 22 Nov. 1708, being the beginning of the very next session, which was the first of a new parliament, a motion being made, and the question put in the words of the second resolution of 18 Feb. 1707, the house divided, and it passed in the negative, 178 to 169. 16 Journ. 7.

9 Dec. 1710. At the beginning of the next parliament, an unsuccessful attempt was made to renew the trial by ballot. " A motion being " made, and the question " being put, that all questions "upon elections and returns " of members to serve in par-" liament be determined by "ballot, if demanded by any member," the house divided, and it passed in the negative, 247 to 39. 16 Journ. 429.

(a) See the cases of Montgomery and Norfolk, 23 May, 1685. 9 Journ. 715, 716. and Thetford, 1 and 2 June, 1685. 9 Journ. 723. 725.

Sect. 1.

When election cases were tried by committees before that act, the decisions of such committees were subject to the revision of the house, and were rejected or confirmed by the voice of the majority there.

The consequence of this was, that although the decisions of the committees of privileges and elections were at first distinguished for wisdom, purity, and justice, as the house took the decisions more into their own hands, they became illegal, inconsistent and contradictory.

A judicature so essentially defective imperiously called for great alteration. It was obviously necessary that some jurisdiction should be created, to which resort might be had with confidence, and the decisions of which might be regarded with respect.

With a view to this end, the now existing system of the trial of controverted elections by select committees was introduced by the stat. 10 Geo. 3. c. 16.(a) commonly known by the

ovisions of Geo. 3. c.

(a) The stat. 10 Geo. 3.
c. 16. "An act to regulate
the trials of controverted
clections or returns of members to serve in parliament."
[A. D. 1770.]
Whereas the present

"mode of decision upon petitions, complaining of undue elections or returns of members to serve in parliament, frequently obstructs public business; coccasions much expence, name of the Grenville act (from that of the member who brought in the bill), that statute Provisions of

10 Geo. 3. c.

"trouble, and delay to the "parties; is defective, for " want of those sanctions and " solemnities which are es-" tablished by law in other "trials; and is attended " with many other inconve-" niences:" " For remedy "thereof, be it enacted, by "the king's most excellent " majesty, by and with the " advice and consent of the " lords spiritual and tempo-" ral, and commons, in this " present parliament " sembled, and by the autho-" rity of the same, that after " the end of the present sessions of parliament, when-" ever a petition, complain-" ing of an undue election or " return of a member or mem-" bers to serve in parliament, "shall be presented to the " house of commons, a day " and hour shall, by the said "house, be appointed for "taking the same into consideration; and "thereof in writing shall be "forthwith given, by the " speaker, to the petitioners, sand the sitting members, or "their respective agents, ac-" companied with an order to "them to attend the house, "at the time appointed, by "themselves, their counsel, " or agents.

§ 2. " Provided always, "that no such petition shall

" be taken into consideration "within fourteen days after (See post, 13 "the appointment of the

Geo. 3. c. § 2. post, 16.

"committee of privileges. § 3. " Provided also, that "the house may alter the "day and hour so appointed " for taking such petition " into consideration, and ap-" point some subsequent day "and hour for the same "as occasion shall require; "giving to the respective parties the like notice of "such alteration, and order "to attend on the said sub-"sequent day and hour, as " aforesaid.

§ 4. " And be it further " enacted, that at the time "appointed for taking such " petition into consideration, " and previous to the reading "the order of the day for " that purpose, the serjeant "at arms shall be directed " to go with the mace to the places adjacent, and require " the immediate attendance " of the members on the bu-"siness of the house; and "that after his return the house shall be counted. " and if there be less than one " hundred members present, "the order for taking such "petition into considera-"tion shall be immediately "adjourned to a particular " hour on the following day, " Sunday and Christmas-day

Provisions of 10 Geo. 3, c. 16.

setting forth the grounds upon which it was deemed expedient to pass it, namely, that the

44.)

(See 36 Geo. 3. " always excepted; and the e. 59. § 1. post, "house shall then adjourn to "the said day; and the pro-" ceedings of all committees " subsequent to such notice " from the said serjeant, shall "be void; and, on the said "following day, the house " shall proceed in the same "manner; and so, from day " to day, till there be an at-"tendance of one hundred "members at the reading of "the order of the day, to "take such petition into con-" sideration.

(See 28 Geo. 3. c. 52. § 10. 11. post, 28.)

§ 5. " And be it further "enacted, that if after sum-" moning the members, and "counting the house as "aforesaid, one hundred " members shall be found to " be present, the petitioners, " by themselves, their coun-"sel, or agents, and the "counsel or agents of the "sitting members, shall be "ordered to attend at the "bar, and then the door of " the house shall be locked, "and no member shall be "suffered to enter into or " depart from the house until " the petitioners, their coun-"sel, or agents, and the "counsel or agents for the "sitting members, shall be "directed to withdraw, as "hereinafter is mentioned; " and when the door shall be "locked, as aforesaid, the

"order of the day shall be " read, and the names of all "the members of the house, "written or printed on di-"stinct pieces of parchment " or paper, being all as near "as may be of equal size, "and rolled up in the same "manner, shall be put in "equal numbers into six "boxes or glasses, to be " placed on the table for that " purpose, and shall there be "shaken together; and then "the clerk, or clerk assistant " attending the house, shall " publicly draw out of the "said six boxes or glasses, " alternately, the said pieces " of parchment or paper, and "deliver the same to the "speaker, to be by him " read to the house; and so "shall continue to do, until "forty-nine names of the "members then present be " drawn.

§ 6. "Provided always, "that if the name of any "member who shall have " given his vote at the elec-"tion so complained of as "aforesaid, or who shall be a "petitioner complaining of "an undue election or re-"turn, or against whose re-"turn a petition shall be then "depending, or whose re-"turn shall not have been "brought in fourteen days, "shall be drawn; his name then present mode of decision upon petitions, complaining of undue elections or returns, fre- Provisions of

10 Geo. S. c. 1

" shall be set aside, with the " names of those who are " absent from the house.

§ 7. "Provided also, that " if the name of any member " of sixty years of age or " upwards be drawn, he shall "be excused from serving " on the select committee, " to be appointed as herein-"after is mentioned, if he " require it, and verify the " cause of such requisition " upon oath.

§ 8. " Provided also, that " if the name of any member "who has served on such "select committee during " the same session be drawn, " he shall, if he requires it, "be excused from serving "again in any such select "committee, unless "house shall, before the day "appointed for taking the "said petition into consi-"deration, have resolved, "that the number of mem-" bers who have not served " on such select committee. "in the same session, is in-" sufficient to fulfil the pur-" poses of this act, respect-"ing the choice of such select " committee.

§ 9. " Provided always, "that no member, who after "having been appointed to "serve in any such select "committee shall, on ac" count of inability or acci-"dent, have been excused "from attending the same " throughout, shall be deemed " to have served on any such " select committee.

§ 10. " And be it further " enacted, that if any other "member shall offer and " verify upon oath any other "excuse, the substance of "the allegations so verified "upon oath shall be taken "down by the said clerk, in " order that the same may be "afterwards entered on the "journals, and the opinion " of the house shall be taken thereon; and if the house shall resolve, that the said " member is unable to serve. " or cannot without great and "manifest detriment serve, " in such select committee. "he also shall be excused " from such service.

§ 11. " And be it further "enacted, that instead of "the members so set aside "and excused, the names "of other members shall "be drawn; who may, in "like manner, be set aside "or excused, and others "drawn to supply their places, until the whole " number of forty-nine mem-"bers, not liable to be so " set aside or excused, shall " be complete; and the petiSeet. 1.
Provisions of to Geo. 3.c. 16.

(See 11 Geo. 3. c. 42. § 6. post, 17. 28 Geo. 3. c. 52. § 14. post, 30. 42 Geo. 3. c. 84. § 4. post, 50. 53 Geo. 3. c. 71. § 20. post, 62.)

quently obstructed public business, occasioned much expence, trouble, and delay to the parties,

"tioners, or their agents, "shall then name one, and "the sitting members, or " their agents, another, from " among the members then " present, whose names shall " not have been drawn, to be "added to those who shall " have been so chosen by lot. & 12. " Provided always, "that either of the members "so nominated shall or may " be set aside, for any of the " same causes as those chosen "by lot; or shall, if he re-" quires it, be excused from " serving on the said select "committee; and the party "who nominated the member "so set aside or excused, "shall nominate another in

"his stead, and so continue to do as often as the case

" shall happen, until his no-

" minee is admitted. § 13. " And be it further "enacted, that as soon as "the said forty-nine mem-"bers shall have been so " chosen by lot, and the two " members to be added there-"unto shall have been so " nominated as aforesaid, the "door of the house shall be " opened, and the house may "proceed upon any other "business; and lists of the " forty-nine members "chosen by lot shall then be "given to the petitioners, "their counsel, or agents,

"and the counsel or agents "for the sitting members. "who shall immediately with-"draw, together with the "clerk appointed to attend "the said select committee: " and the said petitioners and "sitting members, their coun-" sel or agents, beginning on " the part of the petitioners, "shall alternately strike off " one of the said forty-nine "members, until the said "number shall be reduced "to thirteen; and the said "clerk, within one hour at "farthest from the time of "the parties withdrawing "from the house, shall de-"liver in to the house the "names of the thirteen mem-"bers then remaining; and "the said thirteen members. "together with the two " members nominated aforesaid, shall be sworn at "the table, "well and truly " to try the matter of the peti-" tion referred to them, and a true judgment to give according to the evidence;" "and shall be a select com-" mittee to try and determine " the merits of the return or "election appointed by the "house to be that day taken " into consideration; and the "house shall order the said " select committee to meet at "a certain time to be fixed " by the house, which time was defective for want of the sanctions and solemnities established by law in other trials; Provisions of and attended with many other inconveniences.

10 Geo. 3. c. 16.

" shall be within twenty-four " hours of the appointment " of the said select com-" mittee, unless a Sunday or " Christmas-day shall inter-"yene; and the place of "their meeting and sitting "shall be some convenient "room or place adjacent to "the house of commons, or " court of requests, properly " prepared for that purpose. § 14. " Provided always, "that on the parties with-"drawing as aforesaid, the "house shall continue sit-"ting; and the said fifty-one "members, so chosen and " nominated, shall not depart " the house till the time for the " meeting of the said select " committee shall be fixed. § 15. " Provided always, " and be it further enacted, "that if upon the drawing "out of the name of any "member by lot, as afore-" said, the said petitioners or "sitting members, or their "agents, shall declare, that "such member is intended " to be one of the two nomi-"nees to be nominated by "them respectively, and if " such member shall consent "to such nomination, the a name of such member so "drawn by lot shall be set " aside, and, unless objected "to as aforesaid, he shall " serve as such nominee, and

" the name of another member shall be drawn to supply " his place, to complete the " number of forty-nine mem-"bers to be drawn by lot; "and if the said petitioners " or sitting members, or their "agents, shall not respec-"tively nominate a member "then present, who shall be " admitted according to the " directions of this act, then "the want of such nomina-"tion shall be supplied, by " drawing out, instead there-" of, the name of one or two " members, as the case shall "require; who shall be drawn "by lot in the like manner. " and subject to the like ob-" jections and excuses as the "other forty-nine members "already drawn by lot, and " shall be added to the lists " of the said forty-nine mem-" bers, and shall be liable to "be struck off in the same "manner; leaving always "the number of fifteen mem-"bers in the whole, and no "more, as a select com-"mittee, for the purposes " aforesaid. § 16. " And, for the

greater dispatch and cer-

"tainty in the proceeding

"hereinbefore described, be

" it further enacted, that the

" names of all the members

" so written and rolled up as

"hereinbefore directed, shall,

Sect. 1. evisions of Geo. 3.c. 16. By the provisions of this act, some of which have been since further regulated, the house of com-

"previous to the day ap-" pointed for taking any such " petition into consideration, "be prepared by the said "clerk, or clerk assistant, " and by him put into a box "or parcel, in the presence "of the speaker, together " with an attestation, signed "by the said clerk, or clerk "assistant, purporting, that "the names of all the mem-" bers were by him put therein " the day of " the year which said "box or parcel the speaker "shall seal with his own " seal; and to the outside "thereof shall annex an at-"testation, signed by him-" self, purporting, that the "said box or parcel was on " the day of in the year " made up in his presence, " in the manner directed by "this act: and that as soon " as the parties shall be with-"drawn as aforesaid, and "before the house shall " enter on any other business, " any member may require, "that the names of all the "members, which remain " undrawn, shall be drawn, "and read aloud by the

§ 17. "And be it further enacted, That the said select committee shall, on their meeting, elect a chair-

"said clerk or clerk assist-

" ant.

"man from among such of the members thereof as sall have been chosen by lot; and if in the election of a chairman there be an equal number of voices, the member whose name was first drawn in the house shall have a casting voice; so likewise, in case there should ever be occasion of or electing a new chairman, on the death, or necessary absence of the chairman first elected.

§ 18. " And be it further "enacted, that the said se-" lect committee shall have " power to send for persons, "papers, and records; and "shall examine all the wit-"nesses who shall come be-" fore them upon oath; and "shall try the merits of the "return, or election, or "both; and shall determine." "by a majority of voices of "the said select committee, "whether the petitioners or "the sitting members, or " either of them, be duly "returned or elected, or "whether the election be " void; which determination " shall be final between the "parties to all intents and "purposes; and the house, " on being informed thereof "by the chairman of the " said select committee, shall " order the same to be en-" tered in their journals, and

mons, in each instance, where a petition complaining of an undue election or return, is pre- Provisions of

Sect. 1. 10 Geo. 3. c. 16

give the necessary direc-" tions for confirming or al-" tering the return, or for the " issuing a new writ for a " new election, or for carry-" ing the said determination " into execution, as the case " may require.

§ 19. "And be it further " enacted, that the said select " committee shall sit every day (Sunday and Christmasday only excepted) and shall never adjourn for a Longer time than twenty-Four hours, unless a Sunday or a Christmas-day interwene, without leave first btained from the house. upon motion, and special cause assigned for a longer adjournment; and in case The house shall be sitting at The time to which the said select committee is adjourned, then the business of the house shall be stayed, and a motion shall be made for a further adjournment, for any time to be fixed by the house, not exceeding twenty-four hours, unless a Sunday or Christmas-day intervene.

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§ 20. " And be it further "enacted, that where the "time prescribed by this act " for the meeting, sitting, or "adjournment of the said "select committee, shall, by "the intervention of a Sun-" day or Christmas-day, ex"ceed twenty-four hours, "such meeting, sitting, or " adjournment, shall "within twenty-four hours " from the time of appointing

" or fixing the same, exclu- (See 28 Geo. 3 " sive of such Sunday or c. 52. § 10. post " Christmas-day. § 21. " And be it further "enacted, that no member " of the said select committee " shall be allowed to absent

"himself from the same, " without leave obtained from "the house, or an excuse "allowed by the house at "the next sitting thereof, on " special cause shewn and " verified upon oath; and the " said select committee shall " never sit, until all the mem-"bers to whom such leave " has not been granted, nor "excuse allowed, are met; "and in case they shall not all meet within one hour after the time to which "the said select committee " shall have been adjourned, " a further adjournment shall " be made in the manner as " before directed, and re-

§ 22. " And be it further "enacted, That the chair-" man of the said select com-"mittee shall, at the next "meeting of the house, " always report the name of " every member thereof who "shall have been absent

"ported, with the cause "thereof, to the house,

rovisions of OGeo. 3. c. 16.

sented, delegates from its own body, a certain number of members, elected in some degree by

"therefrom without such " leave or excuse as afore-"said; and such member " shall be directed to attend " the house at the next sit-"ting thereof, and shall then " be ordered to be taken into "the custody of the serjeant " at arms attending the house, "for such neglect of his "duty, and otherwise pu-" nished or censured at the "discretion of the house; "unless it shall appear to " the house, by facts specially "stated and verified upon "oath, that such member " was, by a sudden accident, " or by necessity, prevented " from attending the said se-" lect committee.

See 28 Geo. 3. 1.)

§ 23. " And be it further 52. § 17. post, " enacted, that if more than "two members of the said "select committee shall on "any account be absent "therefrom, the said select " committee shall adjourn in "the manner hereinbefore " directed; and so, from time " to time, until thirteen mem-" bers are assembled.

iee 28 Geo. 3.

§ 24. " And be it further 52. § 17. post, " enacted, that in case the " number of members able to " attend the said select com-"mittee shall, by death or "otherwise, be unavoidably "reduced to less than thir-" teen, and shall so continue " for the space of three sit-"ting days, the said select

"committee shall be dis-" solved, and another chosen " to try and determine the "matter of such petition in "manner aforesaid; and all " the proceedings of the said "former select committee " shall be void, and of no effect. § 25. " And be it further " enacted, that if the said se-" lect committee shall come " to any resolution other than "the determination above-"mentioned, they shall, if "they think proper, report " the same to the house for "their opinion, at the same "time that the chairman of "the said select committee " shall inform the house of " such determination; and "the house may confirm or. " disagree with such resolu-"tion, and make such orders "thereon, as to them shall " seem proper. § 26. " Provided always, "that if any person sum-"moned by the said select "committee, shall disobey "such summons, or if any "witness before such select "committee shall prevari-"cate, or shall otherwise " misbehave in giving, or re-"fusing to give evidence, "the chairman of the said "select committee, by their "direction, may, at any

" time, during the course of

"their proceedings, report

" the same to the house, for

chance, and in some degree by choice of the parties, and these being formed into a select Provisions of

Sect. 1. 10 Geo. 3. c. 16.

"the interposition of their "authority or censure, as "the case shall require.

§ 27. " And be it further " enacted, that whenever the " said select committee shall "think it necessary to de-"liberate amongst them-" selves, upon any question "which shall arise in the " course of the trial, or upon "the determination thereof, " or upon any resolution con-" cerning the matter of the "petition referred to them " as aforesaid; as soon as the " said select committee shall "have heard the evidence "and counsel on both sides " relative thereunto, the room " or place wherein they shall " sit shall be cleared, if they "shall think proper, while "the members of the said "select committee consider " thereof; and all such ques-"tions, as well as such de-"termination, and all other "resolutions, shall be by a " majority of voices; and if "the voices shall be equal, "the chairman shall have a " casting voice.

§ 28. " Provided always, "that no such determination " as aforesaid shall be made, "nor any question be pro-" posed, thirteen unless "members shall be present; " and no member shall have " a vote on such determina-"tion, or any other ques-"tion or resolution, who has " not attended during every (See 28 Geo. 3. " sitting of the said select c. 52 \$ 17. post, " committee.

§ 29. " And be it further " enacted, that the oaths by " this act directed to be taken "in the house, shall be ad-" ministered by the said clerk or clerk assistant, in the same manner as the oaths " of allegiance and supre-" macy are administered in "the house of commons; and that the oaths by this act directed to be taken " before the said select com-" mittee, shall be administer-"ed by the clerk attending "the said select committee; "and that all persons who shall be guilty of wilful and " corrupt perjury in any evi-" dence which they shall give "before the house, or the " said select committee, in "consequence of the oath " which they shall have taken "by the direction of this act, " shall, on conviction thereof, "incur and suffer the like " pains and penalties to which " any other person, convict-" ed of wilful and corrupt per-"jury, is liable by the laws " and statutes of this realm. § 30. " And be it further (See 14 Geo. 3. " enacted, that this act shall c. 15. post. 19.) "continue in force seven " years, and till the end of "the session of parliament " next after the expiration of

" the said seven years, and no

" longer."

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committee, it becomes their duty, under the sanction of an oath, well and truly to try the matter of the petition referred to them, and to give a true judgment according to the evidence.

Provisions of 1 Geo. 3. c. 42.

The above statute was explained and amended in the following year by the stat. 11 G. 3.c. 42. (a)

10 **Geo. 3. c.**

16. ante, 6.

(a) The stat. 11 Geo. 3, c. 42. " An Act to explain and " amend an Act, made in the " last Session of Parliament, " intituled, An Act to regulate "the Trials of controverted Elections, or Returns of " Members to serve in Par-" liament."—[A. D. 1771.] "Whereas an act was pass-"ed in the last session of "parliament, intituled, An "act to regulate the trials " of controverted elections, or "returns of members to serve " in parliament; and whereas "further provisions may be "necessary to prevent all "obstructions and difficul-"ties, which in certain cases "may arise in the execution " of the said act:" " Be it "therefore enacted, by the "king's most excellent ma-" jesty, by and with the ad-"vice and consent of the "lords spiritual and tempo-"ral, and commons, in this " present parliament assem-" bled, and by the authority " of the same, that from and " after the passing of this act, "if several parties, on dis-"tinct interests or grounds " of complaint, shall present "separate petitions, com-" plaining of an undue elec"tion or return of a member
"or members to serve in par"liament, the same notices
"and orders shall be given to
"all such parties, or their re"spective agents, as by the
"said act are directed to be
"given to the sitting mem"bers, or the petitioners
"therein mentioned, or their
"respective agents.

§ 2. "And be it further en-" acted, that the clause in the " said act, which provides that "no petition shall be taken "into consideration within " fourteen days after the ap-" pointment of the committee " of privileges, be repealed; "and that from henceforth " no petition, complaining of "an undue election, or re-"turn of a member or mem-" bers to serve in parliament. "shall be taken into con-"sideration within fourteen "days after the commence-"ment of the session of par-" liament in which it is pre-" sented, nor within fourteen "days after the return to "which it relates shall be "brought into the office of " the clerk of the crown.

§ 3. "And be it further "enacted, that if at the time "of drawing by lot the names

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by which further provisions were made to prevent obstructions and difficulties, which it was

Provisions of 11 Geo. 3. c. 49

" of the members, in manner " prescribed by the said act, "the number of forty-nine " members, not set aside nor se excused, cannot be com-66 pleted, the house shall pro-" ceed in the manner they are "directed by the said act "to proceed, in case there " be less than one hundred "members present at the "time therein prescribed for " counting the house, and so, " from day to day, as often " as the case shall happen.

§ 4. "And be it further " enacted, that on the day "appointed for taking any " petition, complaining of an " undue election, or return " of a member or members " to serve in parliament, into "consideration, the house "shall not proceed to any " other business whatsoever, except the swearing of ** reading of the order of the " day for that purpose.

§ 5. "And be it further s enacted, that if the select " committee shall have oc-" casion to apply or report " to the house, in relation to " adjournment of the said "select committee, the ab-" sence of the members thereof, or the non-attendance " or misbehaviour of wit-"" nesses summoned to ap-"pear, or appearing before "them, and the house shall " be then adjourned for more

"than three days, the said "select committee may also " adjourn to the day appoint-" ed for the meeting of the " house.

§ 6. " And be it further " enacted, that if on a com-" plaint by petition of an un-" due election or return, there "shall be more than two (See 28 Geo. 3. " parties before the house on c. 52. § 14, 15. "distinct interests, or com- post, 29, 30.) "plaining or complained of "upon different grounds, "whose right to be elected " or returned may be affected " by the determination of the " said select committee, each " of the said parties shall "successively strike off a "member from the forty-" nine members to be chosen "by lot, until the said num-"ber be reduced to thirteen, "in the same manner as by " the said act is directed for "the striking off a member "alternately by the parties "therein mentioned; and the " lists of the forty-nine mem-"bers chosen by lot shall, "for this purpose, be given " to all the said parties, and "the order in which the said " parties shall so strike off the " said members shall be de-"termined by lot after they "are withdrawn from the "bar, and in such case, nei-"ther of the said parties " (there being more than "two) shall be permitted to " name a member to be added

Provisions of t1 Geo. 3. c. 42.

foreseen might arise in the execution of the law as it then stood; and the application of this new jurisdiction was adapted with greater convenience to certain cases not before sufficiently contemplated; namely, those of petitions, complaining of undue elections or returns, presented by several parties on distinct interests or grounds of complaint.

These statutes of 10 Geo. 3. c. 16. and 11 Geo. 3. c. 42. which were experimental and tem-

Sec 53 Geo. i. c. 71. § 20. est, 63.)

" to the members so drawn "by lot as aforesaid; but "that as soon as the list of "thirteen members shall be "returned by the parties to "the house, such thirteen " members shall immediately "withdraw, and shall, by "themselves, choose "members then present in "the house, whose names " shall not have been drawn. "to be added to the said "thirteen members: and shall, within one hour from "the time of their with-" drawing, report the names " of such two members to the " house: which two members "shall be liable to be set " aside, on the like objections " for which nominees may be "set aside by virtue of the "said act; and in case such "two members, or either of "them, shall be set aside for " any of the causes aforesaid, " then the said thirteen mem-"bers shall choose one or

"two other members as the " case shall require, until "two members are chosen. "against whom none of the " objections to nominees " mentioned in the said act " shall be taken and allowed: " and that the names of such " two members shall be then "added to the said list of "thirteen members; and all "the said fifteen members " shall be sworn at the table, " and they shall be the select "committee appointed for "the purposes expressed in "this and the said former

§ 7. "And be it further "enacted, that where the "said nominees are by this "act directed to be named by "the said thirteen members, "no member present at the time of the ballot shall de-"part from the house until "the time for the meeting of the said select committee shall be fixed."

porary (a) in the first instance, were found by experience to be adequate to the purpose, and Provisions of were in consequence made perpetual by the stat. 14 Geo. 3. c. 15. (b).

14 Geo. 3. c. 15.

The stat. 25 Geo. S. c. 84. (c) further extended Provisions of 25 Geo. 3. c. 84

(a) The stat. 10 Geo. 3. c. 16. was by § 30 of the act to have continued for seven years; and that of the 11 Geo. 3. c. 42. though not enacted for any specific time, being explanatory of the former, may be considered as having been intended to have had the same duration.

(b) The stat. 14 Geo. 3. c. 15.-" An Act for making " perpetual two Acts, passed in "the tenth and eleventh Years " of the Reign of his present "Majesty, for regulating the "Trials of controverted Elec-"tions, or Returns of Mem-" bers to serve in Parliament."

[A. D. 1774.] "Whereas an act passed leo. "in the tenth year of the 16. "reign of his present ma-" jesty, intituled, An act to " regulate the trials of contro-" verted elections, or returns of "members to serve in parlia-"ment, which act was made "to continue for a limited "time only; and whereas an-"other act, passed in the lee " eleventh year of the reign 42 " of his said majesty, inti-, 16. " tuled, An act to explain and " amend an act, made in the last "session of parliament, in"tituled, An act to regulate " the trials of controverted elec-"tions, or returns of members "to serve in parliament; and "whereas the provisions of "the said recited acts are "well adapted to procure to "the commons of this realm " a free and impartial trial of " controverted elections of " members to serve in parlia-" ment, and have been found "by experience to be prac-"ticable and beneficial:" "May it therefore please "your majesty, that it may "be enacted, and be it en-"acted, by the king's most "excellent majesty, by and "with the advice and con-" sent of the lords spiritual "and temporal, and com-"mons, in this present par-" liament assembled, and by " the authority of the same, "that the said recited acts, "passed in the tenth and "eleventh years of his pre-" sent majesty, shall be, and " are hereby made, perpe-" tual."

(c) The stat. 25 Geo. 3. c. 84.—" An Act to limit the " Duration of Polls and Scru-"tinies, and for making other "Regulations touching

Provisions of 15 Geo. 3. c. 84. the operation of the former acts (which had b hitherto confined to cases of petitions comple

" Election of Members to serve " in Parliament, for Places "within England and Wales, " and for Berwick upon Tweed; " and also for removing Diffi-" culties which may arise for " want of Returns being made " of Members to serve in Par-" liament."-[A. D. 1785.] (For § 1, see 1 vol. 623. § 2, ib. 710. § 3, ib. 629. § 4, ib. 533. § 5, ib. 648. § 6, ib. 710. § 7, ib. 584. 8 8, ib. 649. § 9, ib, 626.) § 10. "And whereas an act " was passed in the tenth year " of his present majesty's reign " (intituled, An act to regu-" late the trials of controverted " elections, or returns of mem-" bers to serve in parliament); " and another act was passed "in the eleventh year of his "said majesty's reign, for "explaining and amending "the said former act; and "whereas no provision is " made therein for the hear-"ing and determining any "petition, unless the same " shall complain of an undue " election, or return of mem-" bers to serve in parliament;" " Be it therefore enacted, that " from and after the first day " of August, one thousand " seven hundred and eighty-"five, if upon any writ or "writs to be issued for the " election of any member or "members to serve in par-"liament, no return shall be

" made to the same on o " fore the day on which " writ is made returnable "if a writ shall have ! "issued during any se " or prorogation of pa "ment, and no return " be made to the same w " fifty-two days after the " on which such writ h " date; or if the return, r " in either of such cases. "not be a return of a n " ber or members, accor "to the requisition the " but contain special ma " only concerning such "tion, it shall and ma " lawful for any perso " persons, having had "claiming to have ha "right to vote at such "tion, or claiming to " had a right to be retu "as duly elected the "who shall think himse "themselves aggrieved " petition the house of a " mons concerning the s "and upon such pet "being presented, a " and hour shall be appoi " for taking the same "consideration, and no "thereof, in writing, sha "forthwith given by " speaker to the petition "and to the returning "ficer or officers by w " such return ought to ! "been made, or shall " been made, accompa

6. ante, 6.

1 Geo. 3. c. 2. ante, 16. ing of undue elections or returns), to cases where there should be no return, or where the re- Provisions of

25 Geo. 3. c. 84.

"with an order to him or "them to attend the house "at the time appointed, by "himself or themselves, his " or their counsel or agents; " and a select committee shall " be appointed according to "the directions of the said "two recited acts for regu-"lating the trial of con-"troverted elections; which " committee shall try and de-"termine whether any and " which of the person or per-"sons named in such peti-"tion, ought to have been " returned, or whether a new "writ ought to issue; which " determination shall be final to all intents and purposes, "and the house being informed thereof by chairman of the said select committee, shall order the same to be entered in their "journals, and give the necessary directions for ordering a return to be made " or for altering the return, " if made, or for the issuing "a new writ for a new elec-"tion, or for carrying the " said determination into ex-"ecution, as the case may " require.

§ 11. " And be it further " enacted, that all and every "the rules, regulations, au-" thorities, and powers, given "or prescribed by either of " the said recited acts for re-"gulating the trial of con"troverted elections, with . "respect to select commit-"tees to be appointed by " virtue of the said acts, or "either of them, shall be in "full force and effect, with "respect to select commit-" tees to be appointed by vir-" tue of this present act, in as "full and ample a manner " as if the same were herein "repeated, and particular-" ly and especially enacted

" concerning the same. § 12. " Provided always. "that if the returning of-"ficer or officers, by whom " such return ought to have "been made, or has been " made, cannot be found so "as to be served with a " notice or order herein-be-"fore mentioned, or being " served, shall not appear by "himself or themselves, his " or their counsel or agents. " at the day or time appoint-"ed for taking such petition " into consideration, it shall " and may be lawful for the "house to permit or autho-" rize any person to appear in "the stead of him or them; and in case there shall be " more petitions than one pre-" sented, complaining of such " return, or omission of a re-"turn, on distinct interests, " or complaining upon dif-"ferent grounds, the house "shall determine, from the " nature of the case, wheSect. 1.

turn should not be made in sufficient time, or not according to the requisition of the writ or precept.

Provisions of 8 Geo. 3. c. 52.

The next act which passed upon this subject was that of the 28 G. 3. c. 52. (a) which restricts

"ther the returning officer "or officers; or person ap-" pearing in the stead of him "or them, shall, together "with such petitioners, be "entitled to strike off from " the list of members, drawn "by lot, in the manner di-"rected by the said act, " passed in the eleventh year " of the reign of his present " majesty, in the case where "there shall be more than "two parties before "house, or whether such " list shall be reduced by the " parties severally presenting " the said petitions only." (For § 13, see 1 vol. 629. § 14, ib. 813. § 15, ib. 630. § 16, ib. 628.)

(a) The stat. 28 Geo. 3. c. 52.—" An Act for the fur-"ther Regulation of the Trials "of controverted Elections, or "Returns of Members to serve "in Parliament."

"Whereas, by an act of parliament passed in the tenth year of the reign of his present majesty, intituled, An act to regulate the trials of controverted elections, or returns of members to serve in parliament, certain regulations were

"established, for a time "therein limited, for the " trials of controverted elec-"tions, or returns of mem-" bers to serve in parliament: "and whereas, by an act " passed in the eleventh year 11 " of the reign of his present 3.6 " majesty, intituled, An act " to explain and amend an " act made in the last session " of parliament, intituled, An act to regulate the trials " of controverted elections, or "returns of members to serve " in parliament, further re-" gulations were made there-"in: and whereas the provi-" sions of the said acts were. "by an act passed in the " fourteenth year of the reign 14 of his present majesty, con- 3. "tinued and made perpetual: anti "and whereas, by an act " passed in the twenty-fifth 25 "year of the reign of his 3.c " present majesty, intituled, " An act to limit the duration " of polls and scrutinies, and " for making other regula-"tions touching the election " of members to serve in par-"liament for places within " England and Wales, and for "Berwick upon Tweed, and

" also for removing difficulties

" which may arise for want of

0 Geo. 3. c. 6. ante, 6. the presenting of petitions of complaint with respect to elections and returns, to certain per-

Provisions 28 Geq. 3. c. 4

" returns being made of mem-" bers to serve in parliament, "the provisions of the said " acts were extended, in the " manner therein mentioned, "to petitions complaining "that no return has been " made to a writ, issued for "the election of a member or members to serve in par-"liament, within the times " limited in the said act, or "that such return is not a 44 return of a member or " members according to the " requisition of the writ: and " whereas it is expedient that "further regulations should " be made for the execution " of the said several acts, and "that provision should be " made for discouraging per-" sons from presenting frivo-" lous or vexatious petitions, " or setting up frivolous or " vexatious defences, in any " of the cases to which the "above recited acts relate, "and that provision should " also be made for the final "decision of questions re-" specting the rights of vot-" ing at such elections, or of "nominating or appointing " the returning officer or re-"turning officers who are " to preside thereat :" "Be it "therefore enacted, by the "king's most excellent ma-" jesty, by and with the ad-"vice and consent of the "lords spiritual and tem-

"poral, and commons, in "this present parliament as-"sembled, and by the au-"thority of the same, that "no petition complaining of "an undue election or re-"turn, or of the omission of "a return, or of the insuf-"ficiency of a return, shall be proceeded upon, in the "manner prescribed in the " said above-recited acts, un-" less the same shall be sub-" scribed by some person or " persons claiming therein to " have had a right to vote at "the election to which the same shall relate, or to have had a right to be returned as duly elected "thereat, or alleging himself " or themselves to have been "a candidate or candidates "at such election: provided "always, that in any case "where a writ has been is-" sued for the election of a "member to serve in parlia-"ment for any district of "burghs in that part of "Great Britain called Scot-" land, any such petition as "aforesaid shall and may be "so proceeded upon, if the "same shall be subscribed "by any person or persons "claiming therein to have "had a right to vote at the " election of any delegate or " delegates, commissioner or " commissioners, for choosing " a burgess for such district.

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sons whom the law considers to have a sufficient interest upon such questions; or rather it re-

§ 2. " And be it further "enacted, that if, at any "time before the day ap-" pointed for taking any "such petition into consi-"deration, the speaker of " the house of commons shall "be informed, by a certifi-" cate in writing, subscribed "by two of the members of " the said house, of the death " of the sitting member or " sitting members, or either " of them, whose election or " return is complained of in "such petition, or of the "death of any member or "members returned upon a "double return, whose elec-"tion or return is complained " of in such petition, or that " a writ of summons has been " issued, under the great seal " of Great Britain, to sum-"mon any such member or "members to parliament as " a peer of Great Britain; or "if the house of commons " shall have resolved that the " seat of any such member is "by law become vacant; or "if the said house shall be "informed, by a declaration " in writing, subscribed by " such member or members, " or either of them, as the " case shall be, and delivered " in at the table of the house, that it is not the intention " of such member or mem-" ber's to defend his or their " election or return; in every

"such case notice thereof "shall immediately be sent "by the speaker to the she-"riff, or other returning offi-" cer for the county, borough, " or place, to which such pe-"tition shall relate, and such "sheriff or other returning "officer shall cause a true " copy of the same to be af-"fixed on the doors of the " county hall or town hall, "or of the parish church " nearest to the place where "such election has usually "been held, and such notice" "shall also be inserted, by "order of the speaker, in "the next London Gazette; "and the order for taking " such petition into consider-" ation shall, if necessary, be "adjourned, so that at the "least thirty days may in-"tervene between the day " on which such notice shall " be inserted in the said Ga-" zette, and the day on which " such petition shall be taken " into consideration.

§ 3. "And be it enacted, "that it shall and may be "lawful, at any time within "thirty days after the day "on which such notice shall "have been inserted in the said Gazette, for any persons claiming to "have had a right to vote at "such election, or at the "election of delegates or commissioners for making

(See Geo. c. 71 17. p stricts the operation of the statutes to petitions presented by such persons.—And on the other Previsions of

28 Geo. 3. et 52

" such election, to petition "the house, praying to be " admitted as a party or par-"ties, in the room of such "member or members, or "either of them; and such "person or persons shall "thereupon be so admitted "as a party or parties, and " shall be considered as such, " to all intents and purposes "whatever.

§ 4. "And be it enacted, "that whenever the member " or members, whose election " or return is so complained " of in such petition, shall " have given such notice as " aforesaid of his or their in-"tention not to defend the " same, he or they shall not " be admitted to appear or "act as a party or parties "against such petition, in "any subsequent proceed-" ings thereupon, any thing " in the above recited acts to " the contrary notwithstand-"ing; and he or they shall " also be restrained from sit-" ting in the house, or voting " in any question, until such " petition shall have been de-"cided upon in the manner " prescribed by the above re-" cited acts and by this act.

§ 5. "And be it further "enacted, that no proceed-"ing shall be had upon any " petition, by virtue of the " above recited acts or of this "act, unless the person or

" persons subscribing " same, or some one or more of them, shall, within four-"teen days after the same "shall have been presented " to the house, or within such "further time as shall be li-" mited by the house, per-" sonally enter into a recog-"nizance to our sovereign " lord the king, according to " the form hereunto annexed, (See 53 Geo. 3. " in the sum of two hundred c. 71. \$ 3. post pounds, with two sufficient 55.) " sureties, in the sum of one "hundred pounds each, to "appear before the house at " such time or times as shall " be fixed by the house for "taking such petition into "consideration, and also to "appear before any select " committee which shall be "appointed by the house for "the trial of the same, and "to renew the same in every " subsequent session of par-" liament, until a select com-" mittee shall have been ap-"pointed by the house for "the trial of the same, or "until the same shall have " been withdrawn by the per-"mission of the house; and "if, at the expiration of the " said fourteen days, such re-"cognizance shall not have "been so entered into, or "shall not have been re-"ceived by the speaker of " the house of commons, the "speaker shall report the

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hand it provides for the admission of certain persons as parties, either in the event of the death

" same to the house, and the " order for taking such peti-" tion into consideration shall "thereupon be discharged, "unless, upon matter spe-"cially stated, and verified "to the satisfaction of the " house, the house shall see " cause to enlarge the time " for entering into such re-" cognizance: and whenever "such time shall be so en-" larged, the order for taking " such petition into consider-" ation shall, if necessary, be " postponed, so that no such "petition shall be so taken " into consideration till after "such recognizance shall " have been entered into and "received by the speaker: " provided always, that the (See 53 Geo. 3. " time for entering into such c. 71. § 3. post, or recognizance shall not be " enlarged more than once, " nor for any number of days " exceeding thirty.

§ 6. " And be it enacted, "that the said recognizances shall be entered into before " the speaker of the house of "commons, who is hereby "authorized and empowered "to take the same; and the " sufficiency of the sureties "named therein shall be "judged of and allowed by "the said speaker, on the "report of two persons ap-" pointed by him to examine "the same, of which two " persons the clerk, or clerk

" assistant of the house, shall " always be one, and one of "the following officers, not " being a member of the said "house, shall be the other; " (that is to say) masters of " the high court of chancery, " clerks in the court of king's "bench, prothonotaries in " the court of common pleas, " and clerks in the court of "exchequer; and the said " persons so appointed are "hereby authorized and re-"quired to examine the "same, and to report their " judgment thereupon; and " are also hereby authorized "to demand and receive "such fees, for such exa-"mination and report, as " shall be, from time to time. "fixed by any resolution of " the house of commons.

§ 7. " Provided always, and " be it further enacted, that " in any case where the party " or parties, who are to enter " into such recognizance, or "his or their sureties, or " either of them, shall reside "at a greater distance from " London than forty miles, it " shall and may be lawful for " such party or parties, surety " or sureties, respectively, to "enter into such recogni-" zance before any of his ma-" jesty's justices of the peace; "and his majesty's justices " of the peace, or any of them, " Is and are hereby autho-

56.)

of a sitting member, or of a person returned upon a double return; or of the seat of a member

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"rized and empowered to " take the same; and such re-" cognizance, being duly cer-" tified under the hand of such "justice, and being trans-"mitted to the speaker of "the house of commons, "shall have the same force " and effect as if the same had "been entered into before "the said speaker: provided "also, that it shall and may " be lawful for the persons to "whom it is referred by "the speaker to examine the "sufficiency of such surety "or sureties, to receive as "evidence, in their said ex-"amination, any affidavits re-"lating thereto, which shall "be sworn before any mas-"ter of the high court of "chancery, or before any of "his majesty's justices of the " peace; and such master of "the high court of chancery, " or justice of the peace, re-"spectively, is hereby au-"thorized to administer such " oath, and is authorized and "required to certify such " affidavit under his hand. § 8. " And be it enacted, 3. "that the house shall not " permit any such petition to "be withdrawn, except so " far as the same may relate " to the election or return of "any member or members " who shall, since the same "shall have been presented, "have vacated his or their

6 9. " And be it enacted, "that if the petitioner or " petitioners, who shall have " entered into such recogni-" zance as aforesaid, shall not " appear before the house by "himself or themselves, or "by his or their counsel or "agents, within one hour " after the time fixed, in pur-" suance of the above-recited "acts, and of this act, for "calling in the respective "parties, their counsel or "agents, for the purpose of "proceeding to the appointment of a select "committee; or if the se-" lect committee, appointed "in pursuance of the said "acts, and of this act, for . "the trial of such petition. " shall inform the house that " such person or persons did " not appear before the said "committee, by himself or "themselves, or by his or "their counsel or agents, to "prosecute their said peti-"tion; or if such person or "persons shall neglect to "renew their said petition

"within four sitting days

"after the day of the com-

" mencement of every session

" of the same parliament, sub-" sequent to that in which

" such petition was first pre-

" sented, and until a select

" committee shall have been

"seat by death, or in any

" other manner.

vvisions of Geo. 3. c. 52. returned becoming vacant, or of his declining to defend his election or return; notice of such

"appointed for trial of the "same, or until the same " shall have been withdrawn "by the permission of the "house, in every such case " such person or persons shall " be held to have made default in his or their said "recognizance; and "speaker of the house of "commons shall thereupon " certify such recognizance "into the court of exche-" quer, and shall also certify "that such person or per-"sons have made default "therein, and such certifi-"cate shall be conclusive "evidence of such default, and the recognizance being "so certified shall have the same effect as if the same were estreated from a court " of law: provided always, that " such recognizance and cer-"tificate shall, in every such "case, be elelivered by the "clerk or clerk assistant of "the house of commons, into " the hands of the lord chief " baron of the exchequer, or " of one of the barons of the " exchequer, or of such officer " of the court of exchequer "as shall be appointed by "the said court to receive " the same. § 10. " And whereas, by

"cd in the above-recited acts

"made in the tenth and

" eleventh years of the reign

0Geo. 3. c. 16. 4. 13. 19. 20. " several provisions containnte, 7. 11. 13.

" of his present majesty, Sun-" day and Christmas-day are " excepted from the general " regulations of thesaid acts;" " be it hereby enacted, that "in every such case, Good " Friday shall also be except-"ed therefrom, in the same " manner as if the same had " been specially excepted in "the said acts. " enacted, that if, on the day

§ 11. " And be it also " immediately preceding any " of the three following days. "that is to say, Christmas-"day, Whitsunday, or Good " Friday, after reading the " order of the day for taking " any such petition as afore-" said into consideration, it "shall be found that there " are not one hundred mem-"bers present, or that the " number of forty-nine mem-" bers, not set aside or ex-"cused, cannot be com-" pleted, it shall and may be "lawful for the house, if "they shall think fit, any "thing in the above-recited "acts to the contrary not-" withstanding, to direct " that the said order shall be " adjourned for any number " of days, and the house " shall then immediately be "adjourned to the hour and "day to which such order " shall be so adjourned. § 12. " And whereas it is

" enacted, by the said act

facts (the manner of which is directed by that and a subsequent act) being duly published; in or- Provisions of

28 Geo. 3. c. 52.

. " passed in the eleventh year " of the reign of his present " majesty, that on the day "appointed for taking such " petition into consideration, "the house shall not pro-" ceed to any other business "whatsoever, except the " swearing of members, pre-" vious to the reading of the " order of the day for that "purpose;" "be it hereby " enacted, that it shall and " may be lawful for the house, "previous to reading such " order, to receive any re-" port from any select com-" mittee appointed in -pur-" suance of the above-recited "acts, or of this act, and to " enter the same upon their "journals, and to give the "necessary orders and di-"rections thereupon; and "that previous to reading " the said order, the clerk of " the crown may be admitted " to alter or amend any re-"turn, in pursuance of an " order made on a preceding "day, or on that day; and " also, that it shall and may "be lawful for the house, "previous to reading the "said order, to postpone "the same, for the purpose " of attending his majesty, or 66 his majesty's commissioners, in the house of lords, in "consequence of any mes-" sage from his majesty, or "from his majesty's com" missioners, signified to (See 32 Geo. 8. "the house in the usual c. 1. § 1. post, " manner.

§ 13. " And be it also " enacted, that if, within one " hour after the time fixed in "pursuance of the above-"recited acts, and of this "act, for calling in the re-" spective parties, their coun-" sel or agents, for the pur-" pose of proceeding to the appointment of a select "committee, the petitioner " or petitioners, or some one " or more of them, who shall " have signed any such peti-"tion, shall not appear by "himself or themselves, or "by his or their counsel or " agents, the order for taking "such petition into consi-" deration shall thereupon be "discharged, and such peti-"tion shall not be any further "proceeded upon in the "manner directed in the " above-recited acts, and in " this act.

§ 14. " And be it enacted. " that if, within one hour after "the time so appointed as " aforesaid, the sitting mem-" ber or sitting members, or "other party or parties op-" posing the petition, shall not " appear by himself or them-" selves, or by his or their "counsel or agents, or if, at the "time so appointed as afore-" said, there shall be no party " before the house opposing

41. 36 Geo. 3. c. 59. § 1. post, rovisions of 8 Geo. 3. c. 52.

der that by the coming in of other persons as parties, the question as to the election or return

"the petition, the house " shall proceed to appoint a " select committee, to try " the merits of such petition, " in the following manner; " (that is to say) that the " names of forty-nine mem-"bers shall be drawn, in the "manner prescribed in the "above-recited acts, but in "reducing the list of such " names to thirteen, the place "of a party opposing the " petition shall be supplied "by the clerk appointed to " attend the said committee, "who shall, as often as it "shall come to his turn, as " supplying the place of the " party opposing the petition, " to strike out a name, strike "out that name which then " shall be first in the said list; "and in every case where " the party opposing the peti-"tion would be empowered, " by the above-recited acts, "to nominate one member "to be added to the said "thirteen, the said thir-"teen shall, from among "the persons present in the "house at the time of drawing "the names of the members, " choose one person to supply " the place of the member to "have been so nominated, "in the same manner as is "directed by the above-re-" cited act made in the 11th " vear of his majesty's reign, " in the case where there are

" more than two parties on distinct interests.

§ 15. "And be it further 11 "enacted, that the same 3. " method of reducing the list \$6. " of members drawn to thir-" teen, and of nominating a " member to be added to the "thirteen remaining on the "said list, shall be respec-"tively followed, whenever "any party shall waive his " right of striking off names "from the said list, or of " nominating a member to be " added to the said thirteen. § 16. " And be it further " enacted, that if any person "summoned to attend the " said select committee by "the warrant of the speaker " of the said house, or by "order of the said com-" mittee, shall disobey such "summons, or shall give " false evidence, or prevari-"cate, or otherwise misbe-" have in giving, or in refus-"ing to give, evidence be-"fore the said committee, "the said committee shall " have power, by a warrant " to be signed by the chair-"man, and directed to the " serjeant at arms attending "the house of commons, or " to his deputy or deputies, " to commit such person (not "being a peer of the realm " or a lord of parliament) to "the custody of the said "serjeant, without bail or

11 Geo. 3. c. 12. § 6. ante, 17.

may be tried, notwithstanding that the person returned ceases to have an interest therein, as it Provisions of

Seet. 1. 28 Geo. 3. c. 59.

"mainprize, for any time " not exceeding twenty-four "hours if the house shall "then be sitting, or if not, "then for a time not exceed-" ing twenty-four hours after " the hour to which the house " shall then be adjourned. § 17. " And whereas it is 5. "enacted by the said act " made in the tenth year of " his majesty's reign, that if " more than two members of "the said select committee " shall, on any account, be " absent therefrom, the said " select committee shall ad-" journ in the manner in the " said act directed, and so " from time to time, until o. "thirteen members are as-5. " sembled; and that no such "determination as in the 5. " said act is mentioned shall " be made, nor any question " be proposed, unless thirteen " members shall be present; " and that no member shall "have a vote on such de-"termination, or any other " question or resolution, who "has not attended during "every sitting of the said " select committee; and that, o. "in case the number of 6. "members able to attend the " said committee shall, by "death or otherwise, be un-" avoidably reduced to less "than thirteen, and shall so "continue for the space of "three sitting days, the said

"committee shall be dis-" solved, and another chosen "to try and determine the " matter of such petition, in "the manner in the said act "before provided;" "be it "hereby enacted, that when-" ever any committee shall " have sat for business four-"teen days, not including "those days on which they "shall have adjourned on "account of the absence "of any member, nor in-" cluding Sunday, Christmas-"day, or Good Friday, it "shall and may be lawful " for them to proceed to bu-" siness, if a number of mem-" bers not less than twelve "be present; and in such "case, the committee shall "not be dissolved by rea"son of the absence of "the members, unless the " number of members able to "attend the same shall, by " death or otherwise, be un-"avoidably reduced to less "than twelve, and shall so "continue for the space of "three sitting days; and "whenever any committee "shall in like manner have " sat for business twenty-five "days, it shall and may be " lawful for them to proceed " to business, if a number of "members not less than "eleven be present; and in " such case, the committee "shall not be dissolved by

Provisions of 28 Geo. 3.c. 52.

does not follow, that a seat which the person highest upon the poll may decline to claim

"reason of the absence of the members, unless the number of members able to attend the same shall, by death or otherwise, be unavoidably reduced to less than eleven, and shall so continue for the space of three sitting days.

"three sitting days. § 18. "And be it further "enacted, that every such "committee, at the same " time that they report to the "house their final determi-" nation on the merits of the "petition which they were " sworn to try, shall also re-"port to the house whether "such petition did, or did "not, appear to them to be " frivolous or vexatious; and "that they shall in like man-" ner report, with respect to " every party or parties who " shall have appeared before "them in opposition to such " petition, whether the op-"position of such party or " parties respectively did, or "did not, appear to them to " be frivolous or vexatious; "and that if no party shall " have appeared before them "in opposition to such pe-"tition, they shall then re-" port to the house whether "such election or return, or " such alleged omission of a " return, or such alleged in-"sufficiency of a return, as "shall be complained of in "such petition, according

"as the case shall be, did,
"or did not, appear to
"them to be vexatious or
"corrupt.

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§ 19. " And be it enacted, "that whenever any such "committee shall report to "the house, with respect to " any such petition, that the " same appeared to them to " be frivolous or vexatious, " the party or parties, if any, "who shall have appeared "before the committee in " opposition to such petition. " shall be entitled to recover. " from the person or persons, " or any of them, who shall " have signed such petition, "the full costs and expences " which such party or parties " shall have incurred in op-" posing the same; such costs "and expences to be ascer-" tained in the manner here-"inafter directed.

§ 20. "And be it also " enacted, that whenever any " such committee shall report " to the house, with respect " to the opposition made to " such petition, by any party " or parties who shall have " appeared before them, that "such opposition appeared " to them to be frivolous or "vexatious, the person or "persons who shall have "signed such petition shall " be entitled to recover from "such party or parties, or "any of them, with respect

ought necessarily to belong to the next in point of numbers, or, that the electors would be con- Provisions of

28 Geo. 3. c. 5%.

"to whom such report shall " be made, the full costs and " expences which such peti-"tioner or petitioners shall " respectively have incurred " in prosecuting their said "petition; such costs and " expences to be ascertained "in the manner hereinafter " directed.

§ 21. " And be it also " enacted, that whenever, in "any case where no party " shall have appeared before " such committee in opposi-"tion to such petition, such " committee shall report to "the house, with respect to " the election or return, or to "the alleged omission of a "return, or to the alleged "insufficiency of a return, " complained of in any such " petition, that the same ap-" peared to them to be vexa-" tious or corrupt, the person " or persons who shall have " signed such petition shall "be entitled to recover " from the sitting member or "sitting members (if any) "whose election or return " shall be complained of in " such petition, such sitting " member or sitting members " not having given notice as " aforesaid of his or their in-"tention not to defend the " same, or from any other " person or persons whom "the house shall have ad-" mitted or directed to be

" made a party or parties to "oppose such petition, the "full costs and expences "which such petitioner or "petitioners shall have in-" curred in prosecuting their "said petition; such costs " and expences to be ascer-" tained in the manner here-" inafter directed.

§ 22. " And be it enacted. "that in the several cases " herein before mentioned. "the costs and expences of "prosecuting or opposing "any such petition shall be " ascertained in manner fol-"lowing; (that is to say), "that on application made to " the speaker of the house of " commons, by any such pe-"titioner or petitioners, or party or parties, as before " mentioned, for ascertaining such costs and expences, he shall direct the same to be "taxed by two persons, of " whom the clerk or clerk as-" sistant of the house shall al-" ways be one, and one of the " following officers, not being "a member of the house, "shall be the other; (that is " to say), masters in the high "court of chancery, clerks " in the court of king's bench, " prothonotaries in the court "of common pleas, and " clerks in the court of ex-"chequer; and the persons "so authorized and directed "to tax such costs and exSect. I.
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tent to be represented by him. And in the case of a member declaring his intention to

" pences shall, and they are " hereby required to examine " the same, and to report the "amount thereof to the " speaker of the said house: "who shall, on application "made to him, deliver to " the party or parties a cer-" tificate, signed by himself, " expressing the amount of "the costs and expences "allowed in such report; "and the persons so ap-" pointed to tax such costs, " and report the amount " thereof, are hereby autho-"rized to demand and re-" ceive, for such taxation and "report, such fees as shall " be, from time to time, " fixed by any resolution of " the house.

§ 23. " And be it enacted. "that it shall and may be " lawful for the party or par-" ties entitled to such costs " and expences, or for his, " her, or their executors or " administrators, to demand " the whole amount thereof, so certified as above, from "any one or more of the " persons respectively, who "are hereinbefore made " liable to the payment "thereof, in the several cases " hereinbefore mentioned: " and in case of non-payment "thereof, to recover the " same by action of debt, in " any of his majesty's courts " of record at Westminster;

" in which action it shall be " sufficient for the plaintiff or " plaintiffs to declare that the " defendant or defendants is " or are indebted to him or " them (in the sum to which "the costs and expences. " ascertained in manner " aforesaid, shall amount) by " virtue of this act; and the "certificate of the speaker " of the house of commons, " under his signature, of the "amount of such costs and " expences, together with an " examined copy of the en-" tries in the journals of the "house of commons, of the " resolution or resolutions of " the said select committee "or committees, shall be "deemed full and sufficient " evidence in support of such "action of debt: Provided " always, that in every such " action of debt, no wager " of law, or more than one "imparlance, shall be al-"lowed; and the party or "parties in whose favour " judgment shall be given in "any such action, shall re-" cover his or their costs.

§ 24. "And be it further "enacted, that in every case "where the amount of such costs and expences shall have been so recovered from any person or persons, it shall and may be lawful "for such person or persons "to recover in like manner

abandon his claim to the seat, he is thereby forbidden afterwards to appear as a party against Provisions of

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" from the other persons, or " any of them, if such there " shall be, who shall be liable "to the payment of the said " costs and expences, a pro-" portionable share thereof, "according to the number

" of persons so liable. § 25. " And be it further " enacted, that whenever any " such select committee, ap-" pointed to try the merits " of any such petition as " aforesaid, shall be of opi-"nion that the merits of "such petition do wholly or "in part depend on any " question or questions which "shall be before them re-" specting the right of elec-"tion for the county, city, " borough, district of burghs, "or other place to which " such petition shall relate, " or respecting the right of "choosing, nominating, or "appointing the returning " officer or returning officers, " who is or are to make return "of such election, the said "committee, in such case, " shall require the counsel or " agents for the several par-" ties, or if there shall be none " such before them, shall then " require the parties them-"selves, to deliver to the " clerk of the said committee, "statements in writing of " the right of election, or of "choosing, nominating, or

"appointing, returning of-

"ficers, for which they re-"spectively contend; and "the committee shall come "to distinct resolutions on " such statements, and shall, " at the same time that they " report to the house their "final determination on the "merits of such petition; "also report to the house "such statement or state-"ments, together with their "iudgment with respect "thereto: And such report " shall thereupon be entered " in the journals of the house, " and notice thereof shall be "sent by the speaker to the " sheriff, or other returning " officer, of the place to which "the same relate; and a "true copy of such notice. "shall, by such sheriff, or " other returning officer, be "forthwith affixed to the " doors of the county hall or "town hall, or of the parish " church nearest to the place "where such election has "usually been held; and (See 53 Geo. 3. " such notice shall also be c. 71. § 17. post, "inserted by order of the 62.) "speaker, in the next Lon-

" don Gazette. § 26. "And be it enacted, (See 53 Geo. S. "that it shall and may be c. 71. § 15. post, " lawful for any person or 60.) " persons, at any time within "twelve calendar months " after the day on which such " report shall have been made "to the house, or within

rovisions of 8 Geo 3, c, 52.

the petition, or to sit or vote in the house until such petition shall have been decided. This act

" fourteen days after the day of the commencement of "the next session of parlia-"ment after that in which " such report shall have been " made to the house, to pe-"tition the house to be ad-" mitted as a party or parties "to oppose that right of "election, or of choosing, " nominating, or appoint-" ing, the returning of-"ficer or returning officers, "who is or are to make "return of such election, "which shall have been "deemed valid in the judg-" ment of such committee.

§ 27. " And be it enacted, " that if no such petition shall " be so presented within the " time above limited for pre-" senting the same, the said "judgment of such com-"mittee, on such question " or questions, shall be held "and taken to be final and " conclusive in all subsequent " elections of members of " parliament for that place to "which the same shall re-" late, and to all intents and "purposes whatsoever; any " usage to the contrary not-" withstanding.

§ 28. "And be it enacted, "that whenever any such petition shall be so presented, a day and hour shall be appointed by the house for taking the same into "consideration, so that the

"space of forty days at the " least shall always intervene (See "between the day of pre- Ger "senting such petition and c.8 "the day appointed by the 43 " house for taking the same "into consideration; and "notice of such day and "hour shall be inserted, by "order of the speaker, in "the next London Gazette, (Se " and shall also be sent by Ger "him to the sheriff, or other c. 7 "returning officer, for the " place to which such peti-"tion shall relate; and a true "copy of such notice shall, " by the said sheriff, or other " returning officer, be forth-"with affixed to the doors " of the county hall, or town " hall, or of the parish church " nearest to the place where "such election has usually " been held.

§ 29. " And be it enacted, "that it shall and may be "lawful for any person or " persons, at any time before "the day so appointed for "taking such petition into " consideration, to petition "the house to be admitted " as a party or parties to de-" fend such right of election, " or of choosing, nominating, " or appointing, the return-"ing officer or returning " officers; and such person or " persons shall thereupon be "so admitted, and shall be " considered as such to all

also requires recognizances to be entered into on the part of petitioners in most cases (an al- Provisions of

Sect. 1. 28 Geo. 3. c. 52.

" intents and purposes what-" ever.

§ 30. " And be it enacted. "that at the hour appointed "by the house for taking "such petition into consi-"deration, the house shall " proceed to appoint a select " committee to try the merits "thereof, according to the "directions of the above re-"cited acts, and of this act: "and such select committee "shall be sworn to try and " determine the merits of " such petition, so far as the " same relate to any ques-" tion or questions respecting " the right of election for the " place to which the petition "shall relate, or respecting "the right of appointing, no-" minating, or choosing, the " returning officer or return-"ing officers who are to make " return of such election; and "the determination of such "committee on such ques-"tion or questions shall be "entered on the journals of "the house, and shall be " held and taken to be final " and conclusive in all sub-" sequent elections of mem-" bers of parliament for that "place to which the same "shall relate, and to all in-"tents and purposes what-"ever; any usage to the " contrary notwithstanding. § 31. " And whereas it is

"amongst other things en-

"acted, by an act passed in "the second year of the reign of his late majesty 2 Geo. 3. c. 24. " king George the second, in- & 4. App. xiii. "tituled, An act for the more xv. " effectual preventing bribery " and corruption in the elec-" tions of members to serve in " parliament, that such votes "shall be deemed to be "legal which have been "so declared by the last " determination in the house " of commons; which last "determination concerning "any county, shire, city, "borough, cinque port, or " place, shall be final to all "intents and purposes what-" ever, any usage to the con-" trary not withstanding;" " be "it enacted, that so much of "the said act as is above re-"cited shall be, and the "same is hereby repealed, "in so far only as the same " relates, or might be con-"strued to relate, to any "such determination to be " made in the house of com-"mons subsequent to the " passing of this act.

§ 32. " And be it enacted, " that all and every the rules, " regulations, authorities, and " powers, prescribed or given "by the above recited acts, " or by this act, to select " committees for the trial of "controverted elections or "returns, shall be in full "force and effect with re-

Sect. 1. rovisions of Geo. 3. c. 52. teration in the amount of which has been since made), thereby enforcing the appearance of peti-

" right as aforesaid, in as full " and ample a manner as if the " same were herein repeated, " and particularly and epeci-" ally enacted, concerning " such select committees: "Provided always, that the " several rules and regula-" tions hereinbefore enacted, " by which certain persons " are directed to enter into " recognizances, "which certain persons are " made liable to the pay-"ment of costs, in the parti-" cular manner, and in the " several cases hereinbefore " specified, shall not be "construed to apply to the " case of any petition pre-" sented in pursuance of this "act, and relating solely to "any question or questions "respecting the right of "election, or of choosing, " nominating, or appointing, "a returning officer or re-"turning officers. § 33. " And be it further " enacted, that whenever it "shall happen that parlia-"ment shall be prorogued " while any select committee " shall be sitting for the trial " of any such petition as " aforesaid, and before they

" shall have reported to the

" house their determination

"spect to select committees

"appointed by virtue of this

"act, for the trial of such question or questions of

"thereon, such committee " shall not be dissolved by " tenh prorogation, but shall be thereby adjourned to " twelve of the clock on the "day immediately following "that on which parliament " shall meet again for the . "dispatch of business (Sun-" days, Good Friday, and " Christmas-day, always ex-" cepted), and all former pro-" ceedings of the said com-"mittee shall remain and " continue to be of the same " force and effect as if par-"liament had not been so " prorogued; and such com-" mittee shall meet on the " day and hour to which it " shall be so adjourned, and "shall thenceforward con-" tinue to sit from day to day, " in the manner provided in " the above-recited acts, and " in this act, until they shall " have reported to the house " their determination on the " merits of such petition."

Form of the Recognizance referred to in this Act.

"BE it remembered, that on the day of in the year of our Lord before me "A. B. [speaker of the house of commons] or [one of his majesty's justices of the peace for the county of ame C. D. E. F. and J. G. and severally acknowledged

tioners in order to the trial of their petition. forbids also the withdrawing petitions (though Provisions of under some circumstances this may now be done.) It provides likewise for the case of the nonappearance of petitioners. It makes some further regulations, as to the appointment of select committees, and as to the business of the house at such times; it directs the discharge of petitions upon the petitioners not appearing within a given time; and that notwithstanding the nonappearance of the sitting member or other person opposing a petition, a select committee. shall nevertheless be appointed in the manner therein prescribed, in order that the case may still be inquired into. It further directs the punishment of witnesses not attending, or

Sect. 1. 28 Geo. 3. c. 52

" themselves to owe to our sove-" reign lord the king the follow-"ing sums; that is to say, the " said C. D. the sum of two " hundred pounds, and the said " E. F. and the said J. G. the " sum of one hundred pounds " each, to be levied on their re-" spective goods and chattels, " lands, and tenements, to the " use of our said sovereign lord " the king, his heirs and succes-" sors, in case the said C. D. " shall fail in performing the " condition hereunto annexed.

" THE CONDITION of " this recognizance is, that " if the said C.D. shall duly " appear before the house of

" commons, at such time or " times as shall be fixed by " the said house for taking "into consideration the pe-"tition signed by the said "C. D. complaining of an "undue clection or return " for the [Here specify the "county, city, borough, " or district of burghs] or, " complaining that no return " has been made for the said] of [" within the time limited by " act of parliament, or that "the return made for the " said [is not a return of a "member or members acSect. 1.
Provisions of 28 Geo. 3 c. 52-

giving false evidence, or prevaricating before select committees, and enables committees in certain cases to proceed with reduced num-This act also introduced, for the first time, some very material and salutary regulations, the effects of which were to discourage petitions or opposition to petitions, where the grounds for such petition or opposition were frivolous or vexatious, by fixing upon the parties so petitioning, or so opposing, the payment of the costs incurred by such petition or opposition. Another very important class of regulations, which are tending by degrees to ascertain and fix the law, upon such points, are embraced in the same act, namely, those regarding cases where petitions depend upon questions as to rights of election, or of the appointment of returning officers, select committees being therein directed to report specifically upon the same, in order that their judgment (certain prescribed steps being taken thereupon), unless questioned by petition, within a given time, which has been since altered (the proceed-

"cording to the requisition
of the writ, and shall appear before any select committee which shall be apcommons for the trial of
the same, and shall renew
his said petition in every
subsequent session of this
resent parliament, until a

"select committee shall have
been appointed by the said
house for the trial of the
same, or until the same
shall have been withdrawn
by the permission of the
said house; then this recognizance to be void,
therwise to be of full
force and effect."

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ings upon such petition being therein pointed out), may be final and conclusive at all subse- Provide quent elections.

28 Gen and 32

The statutes of the 11 Geo. 3. c. 42. (§ 4.) and 28 Geo. 3. c. 52. (§ 12.) had very much restricted the business to be gone into by the house, on days appointed for the consideration of election petitions, previous to the reading the order of the day for that purpose; but it being found to be of importance, that that restriction should be somewhat relaxed, the stat. 32 Geo. 3. c. 1. (a) removes it in some enumerated cases.

(a) The stat. 32 Geo. 3. c. 1.—" An Act to extend the 44 Provisions of certain Acts of " Purliament made to regulate sthe Trials of controverted 44 Elections, or Returns of " Members to serve in Par-« liament."—[A. D. 1792.] "Whereas, by an act

"passed in the eleventh "year of the reign of his " present majesty, inti-"tuled, An act to explain and c. 42. " amend an act, made in the .ante, ce last session of parliament, " intituled, An act to reguse late the trials of contro-" verted elections or returns of " members to serve in parlia-" ment, it is enacted, that on "the day appointed by the 44 house of commons for taking into consideration any " petition complaining of an

" undue election, or return

" of any member to serve in " parliament, the house shall "not proceed to any other "business whatsoever, ex-" cept the swearing of mem-" bers, previous to the read-"ing of the order of the "day for that purpose: And 28 Geo. "whereas, by an act passed 52. § 12. "in the twenty-eighth year 29. " of the reign of his present " majesty, intituled, An act " for the further regulation of "the trials of controverted " elections, or returns of mem-" bers to serve in parliament, "it is enacted, that it shall " and may be lawful for the " house, previous to the read-"ing such order, to proceed " to such other business as in "the said act is particularly " specified: And whereas it " is of importance, that the "like power should be ex-

The stat. 34 Geo. 3. c. 83. (a) next followed, which was merely to explain certain provisions

" tended to the several cases mentioned:" " hereinafter " Be it cnacted, hy the king's " most excellent majesty, by "and with the advice and "consent of the lords spi-"ritual and temporal, and " commons, in this present " parliament assembled, and "by the authority of the " same, that on the day ap-" pointed by the house for "taking into consideration "any petition complaining " of an undue election, or "return of any member to " serve in parliament, or the " petition of any person or " persons desiring to oppose "any right of election, or " the right of choosing, no-"minating, or appointing, "any returning officer, or "returning officers, which "shall have been deemed " valid by the determination " of any select committee, it " shall and may be lawful for "the house, previous to the " reading the order or orders " for taking any such petition " or petitions into considera-"tion, to receive any mes-" sage or messages from the "lords; and also that it "shall and may be lawful " for the house, on the days "appointed for the trial of "any articles of impeach-"ment, exhibited or to be " exhibited by the commons, "before the lords in par"liament, previous to the (5 " reading any such order or G " orders as aforesaid, to pro-"ceed to any business that "may be necessary for the " purpose of carrying on the "prosecution of such im-

" peachment."

(a) The stat. 34 Geo. 3. c. 83.—" An Act to explain " so much of an Act, made in "the twenty-eighth Year of " his present Majesty's Reign, "intituled, An Act for the " further Regulation of the "Trials of controverted Elec-"tions, or Returns of Members " to serve in Parliament, as re-" lates to the Time of present-"ing certain renewed Peti-"tions, and taking the same " into Consideration."

[A. D. 1794.] "Whereas, by an act pass- 2 "ed in the twenty-eighth 3 "year of his present ma-jesty's reign, intituled, An " act for the further regulation " of the trials of controverted "elections, or returns of " members to serve in parlia-"ment, it is enacted, that "whenever any such select " committee of the house of "commons, as is therein " mentioned, shall have re-"ported to the house their "judgment respecting the "right of election of mem-"bers to serve in parlia-" ment, for any county, city, "borough, or place, or of

of the stat. 28 Geo. 3. c. 52. (§ 26 and 28.) with respect to certain renewed petitions, and to re-

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Provisions of 34 Geo. 3, c. 83.

se choosing, nominating, or s appointing, the returning officers, who is or are to as make return of such elecf tion, it shall be lawful for any ff person or persons, at any ** time within twelve calendar se months after the day on which such report shall se have been made to the fo house, or within fourteen days after the day of the commencement of the next •• session of parliament, after that in which such report shall have been made to ff the house, to petition the house to be admitted as f parties to oppose the right which has been deemed "" valid in the judgment of such committee; and that ** when such petition shall be so presented, a day shall •• be appointed by the house for taking the same into consideration, so that the space of forty days at the se least shall always intervene se between the day of pre-" senting such petition, and "the day appointed by the * house for taking the same s into consideration: And " whereas the said provision, " which directs that the said "space of forty days shall "intervene between the day " of presenting such petition, "and the day appointed by "the house for taking the "same into consideration,

"hath been construed to ex-" tend to petitions which are "renewed in any session or sessions of parliament, sub-" sequent to that in which " such petition was originally "presented to the house, "which proceeding hath been " found to be inconvenient;" " For remedy thereof, be it "enacted, by the king's "most excellent majesty, "by and with the advice "and consent of the lords " spiritual and temporal, and "commons, in this present " parliament assembled, and "by the authority of the " same, that every petition, "so renewed as aforesaid, "shall be presented to the " house within fourteen days " after the day of the com-" mencement of any such sub-" sequent session or sessions " of parliament, and not other-" wise; and that whenever any " such renewed petition shall " be so presented, a day and " hour, at not less than four-" teen days distance, shall be "appointed by the house, " for taking the same into " consideration, any thing in " the said act to the contrary " hereof notwithstanding. § 2. "And be it further " enacted, that if any such " petition shall not, from

" time to time, and in every

" session of parliament, until

"the same shall be taken

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gulate the time of presenting and of taking the same into consideration.

Provisions of 36 Geo. 3. c. 59.

Some inconveniences had been experienced from the delay in the appointment of select committees by reason of the provisions of the statutes 10 Geo. 3. c. 16. (§ 4.) and 11 Geo. 3. c. 42. (§ 3.) (which were also adopted by the 25 Geo. 3. c. 84. § 11. and the 28 Geo. 3. c. 52. § 32.); in order to remedy which the stat. 56 Geo. 3. c. 59. (a) made some alterations and additional

"into consideration, be so " renewed within the time " above limited for renewing " the same, the judgment of "such committee on such " question or questions shall "be held and taken to be "final and conclusive in all " subsequent elections "members of parliament for "that place to which the " same shall relate, and to all " intents and purposes what-" soever." (a) The stat. 36 Geo. 3. c.

" effectual Execution of several "Acts of Parliament, made for the Trials of controvert-"ed Elections, or Returns of "Members to serve in Par-" liament."-[A. D. 1796.] "Whereas, by an act pass-"ed in the tenth year of the "reign of his present ma-" jesty, intituled, An act to re-"gulate the trials of contra-"verted elections, or returns " of members to serve in parlia-

59.-" An Act for the more

" ment, it is enacted, that at " the time appointed for tak-"ing any petition, complain-ing of an undue election "or return of a member or " members to serve in parlia-"ment, into consideration, "and previous to the read-" ing the order of the day for "that purpose, the house shall be counted, and that "if there be less than one "hundred members present, "the order for taking such " petition into consideration "shall be immediately ad-" journed to a particular hour "on the following day, as "therein mentioned, and the "house shall then adjourn " to the said day; and that on " the said following day, the "house shall proceed in the " same manner; and so from "day to day, till there be "an attendance of one hun-" dred members at the read-"ing the order of the day to " take such petition into con-

10 Geo. 3. c. 16. § 4. ante, 7. regulations, the object of which was to enforce the attendance of members, and to ensure the Provisions of

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"sideration: And whereas, "by an act passed in the 42. " eleventh year of the reign nte, " of his present majesty, " for explaining and amend-"ing the said act, it is en-"acted, that if at the time "of drawing by lot the " names of the members, in " manner prescribed by the " said former act, the num-" ber of forty-nine members "not set aside nor excused "cannot be completed, the "house shall proceed in the "manner they are directed "by the said former act "to proceed, in case there "be less than one hundred "members present at the "time therein prescribed for " counting the house, and so " from day to day, as often "as the case shall happen: "And whereas, by an act 84. " passed in the twenty-fifth " year of the reign of his " present majesty, intituled, An act to limit the duration " of polls and scrutinies, and " for making other regulations " touching the election of mem-" bers to serve in parliament, "for places within England " and Wales, and for Berwick-" upon-Tweed, and also for " removing difficulties which " may arise for want of returns . " being made of members to " serve in parliament; and by " one other act, made in the 5. "twenty eighth year of the

"reign of his present ma-" jesty, intituled, An act for " the further regulation of the "trials of controverted elec-"tions, or returns of members "to serve in parliament, it " is enacted, that petitions " complaining of the omis-" sion, or of the insufficiency "of a return to any writ "issued for the election of "any member or members to "serve in parliament, and "also the petitions of any " person or persons desiring "to oppose any right of "election, or the right of "choosing, nominating, or "appointing, any returning "officer or returning of-"ficers, which shall have "been deemed valid by the " determination of any select "committee, shall be taken " into consideration, tried, "and determined, in the "same manner as petitions " complaining of undue elec-"tions and returns are di-"rected to be taken into "consideration, tried, and "determined, by the said "acts passed in the tenth "and eleventh years of the "reign of his present ma-"jesty: And whereas it is " expedient that further pro-" vision should be made for " the preventing delay in the "appointment of any such "select committee, to be appointed for the purposes

Provisions of 36 Geo. 3. c. 59.

proceeding to the consideration of election petitions at the appointed times, by forbiddin

" aforesaid, any or either of "them," "Be it enacted, by "the king's most excellent " majesty, by and with the "advice and consent of the "lords spiritual and tempo-"ral, and commons, in this " present parliament assem-"bled, and by the autho-"rity of the same, that if, " after counting of the house " in the manner before men-"tioned, there be less than " one hundred members pre-"sent, or if the forty-nine "members not set aside or "excused cannot be comv pleted, it shall and may be " lawful for the house (after "the order or orders for " taking any such petition or " petitions into consideration "shall have been adjourned "to a particular hour, on "the following or such other "day as in the said acts is "directed), to proceed (in " like manner as they might "have proceeded if there " had been no order or or-"ders for taking any such " petition or petitions into " consideration on that day) "upon any order of the day " for the call of the house, " which shall have been pre-" viously fixed for that day, "and to direct that the " house, in pursuance of such " order, be then called over, " if they shall so think fit, or "to direct that such order of "ings, the house shall be ad-

"the day for a call of the "house shall be adjourned " to such future day as the " shall appoint, and in eith " of such cases to come 🗲 c "such resolutions, and " make such orders relating # "thereto, as are usually zat "any time made in suc-II "cases, or as to them shall! " seem meet; and in case n o " order of the day for a call "of the house shall have "been previously fixed for "that day, then it shall and "may be lawful for the house "to order that the house " shall be called over on such "future day as they shall " appoint, and to make such " orders relating thereto as "they shall think necessary, "and in any case to make "such other orders as to "them shall seem expedient " for enforcing the attend-"ance of the members on "the business of the house; "and that the house shall "then adjourn to the same "day to which such order " or orders shall have been "adjourned, and so from "time to time, as occasion "shall require; and in case " no such proceedings with "respect to any call of the "house, or other the mat-"ters before mentioned shall "take place, or if, in the "course of those proceedthe entering upon other business by the house, unless in some very few excepted cases.

The stat. 42 Geo. 3. c. 84. (a) was passed Provisions of Principally for the purpose of pointing out the

42 Geo. 3. c. 84.

sers, the house shall be 's deemed and taken, and shall be declared to be adso iourned to the same day to which such order or orders shall have been adjourned: provided always, that in case the forty-nine members, set aside nor excused, cannot be completed, it shall not be lawful for the house to proceed upon any of the matters before mentioned, until the door of the house is unlocked, and f the parties, their counsel s' and agents, are withdrawn from the bar. § 2. " Provided always, and when it enacted, that the " house shall not, on any day when any such petition or repetitions shall be ordered w to be taken into consider-⁴ business (other than such ⁴ as may, by virtue of any "act of parliament, be pro-"ceeded on previous to the " reading of the order of the "day for taking any such "petition or petitions into "consideration) until there "be an attendance of one "hundred members, or until "the number of forty-nine " members, not set aside nor

iourned for want of mem-

"excused, shall be com-" pleted, other than and ex-" cept to the calling over of " the house, adjourning such " call, or ordering a call of "the house on a future day, "and making such orders "relative thereto as they " shall think fit, or such other "orders as to them shall " seem expedient for enforc-"ing the attendance of the " members on the business of "the house, in the manner " before mentioned."

(a) The stat. 42 Geo. 3. c. 84.—"An Act for the further " Regulation of the Trials of " controverted Elections, " Returns of Members to serve " in Parliament; and for ex-" pediting the Proceedings re-" lating thereto."—

[A. D. 1802.] "Whereas, by an act of 10 Geo. 3. c. " parliament, passed in the 16. ante, 6. "tenth year of the reign of "his present majesty, in-"tituled, An act to regulate "the trials of controverted " elections, or returns of mem-" bers to serve in parliament, "certain regulations were "established, for a time "therein limited, for the " trials of controverted elec-"tions, or returns of mem-" bers to serve in parliament:

"members to serve in parlia-

"ment, within the times li-

"mited in the said act, or

42 Geo. 3. c. 84.

course of proceeding, where two or more peti-Provisions of tions are to be taken into consideration on the

11 Geo. 3. c. 42. ante, 16.

"and whereas, by an act " passed in the eleventh year "of the reign of his present. " majesty, intituled, An act "to explain and amend an " act, made in the last session " of parliament, intituled, An " act to regulate the trials of " controverted elections, or re-"turns of members to serve " in parliament, further regu-" lations were made therein: "And whereas the provi-" sions of the said acts were, "by an act passed in the "fourteenth year of the reign of his present ma-"jesty, continued and made "perpetual: And whereas, "by an act passed in the "twenty-fifth year of the reign of his present ma-" jesty, intituled, An act to "limit the duration of polls " and scrutinies, and for mak-"ing other regulations touch-" ing the election of members " to serve in parliament, for " places within England and "Wales, and for Berwick-"upon-Tweed; and also for " removing difficulties which "may arise for want of re-" turns being made of members " to serve in parliament, the " provisions of the said acts " were extended, in the man-"ner therein mentioned, to " petitions complaining that "no return had been made "to a writ issued for the

" election of a member or

" that such a return was not "a return of a member or "members, according to the " requisition of the writ: And "whereas, by an act passed "in the twenty-eighth year 3 " of the reign of his present " majesty, intituled, An act " for the further regulation of " the trials of controverted elec-"tions, or returns of members " to serve in parliament, cer-"tain other regulations were " made for the execution of " the above-recited acts, and "for discouraging persons " from presenting frivolous or " vexatious petitions, or set-"ting up frivolous or vex-"atious defences, in any of " the cases to which the said " acts relate, and for the final "decision of questions re-" specting the rights of voting " at such elections, or of no-" minating or appointing the " returning officer or return-" ing officers who are to pre-" side thereat: and whereas " it is expedient that further " regulations should be made " for giving dispatch to the " execution of certain parts " of the said several acts," " Be it therefore enacted, by "the king's most excellent

"majesty, by and with the

" advice and consent of the

"lords spiritual and tem-

14 Geo. 3. c. 15. ante, 19.

25 Gen. 3. c. 84. ante, 19.

same day, under the before mentioned statutes of 10, 11, 14, 25, and 28 Geo. 3, or any of them;

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Provisions of 42 Geo. 3. c. 84.

of poral, and commons, in this present parliament assembled, and by the authof rity of the same, that from s and after this present session of parliament, where 🗲 two or more petitions under sand by virtue of the said recited acts, or any of se them, are to be taken into consideration by the house of commons on the same day, it shall and may be " lawful, after summoning ** the members and counting • the house, in the manner directed by the said recited e acts. to order all the petitioners and other parties, by themselves, their counsel, or agents, to attend within the house at the same time, before the door ≪ shall be locked, and after the list of forty-nine names of the members present ✓ hath been drawn by lot. and completed, in order to of form the first committee, 44 according to the direction of the said recited acts, it. "shall and may be lawful to " proceed forthwith, and be-" fore the door of the house " shall be opened, except " for the purpose hereinafter " mentioned, to draw by lot, "and complete in like man-" ner, out of the same boxes "or glasses, another list of "forty-nine names of the re-"maining members present, VOL. II.

"in order to form the se-" cond committee, according " to the said directions; and " in the same manner to draw "by lot and complete, suc-" cessive lists of forty-nine "names of the remaining " members present, in order " to form the third and fourth " or such other number of "committees as may be re-"quisite for the trial of such "petitions; and the select "committees for the trial " and determination of such " petitions, and the nominees "thereto, shall then seve-" rally be appointed accord-" ing to the rules, directions, " and regulations of the said " recited acts, in like manner "as if only one list of forty-" nine names had then been " formed.

§ 2. "Provided always, "that it shall not nor may "be lawful to proceed, in "manner aforesaid, to form "successive lists, in order " to form more than one of " such committees, unless "one hundred and twenty "members shall be present " in the house at the time of " counting the same; nor to "form successive lists, in "order to form more than "two such committees, un-"less two hundred mem-" bers shall then be present "in the house; nor to form " successive lists, in order to Sect. 1.
Provisions of 42 Geo. 3. c. 84.

the object of that act being directed as well to the formation of select committees, and appoint-

" form more than three such "committees, unless two " hundred and seventy mem-" bers shall then be present "in the house; nor to form " successive lists, in order to "form more than four such " committees, unless three " hundred and sixty members " shall then be present in the " house; nor to form succes-" sive lists, in order to form " more than five such commit-"tees, unless four hundred "and sixty members shall "then be present in the house. § 3. "Provided always, " that in case the house shall " proceed, in manner afore-"said, to form successive " lists, in order to form two " or more such committees, "and any member whose mame is drawn shall be "excused for some reason "which applies especially to " any one petition, the name " of such member shall be "returned into the box or "glass from whence it has " been taken, so that it may be " again drawn by lot upon any " of the following petitions.

" of the following petitions. § 4. "Provided also, and be it further enacted, that if, upon drawing out the name of any member by lot upon one of such petitions, the petitioners or sitting members, or the agents, who shall have been ordered, under or by virtue

" of this act, to attend within "the house upon any other " petition, shall declare, that "such member is intended "to be one of the two "nominees nominated by "them respectively; and if " such member shall consent "to such nomination, the "name of such member so "drawn shall be set aside. " and another member shall "be drawn to supply his "place, to complete the " number of forty-nine to be " drawn by lot.

§ 5. " Provided also, that "if two or more such peti-"tions are to be taken into-" consideration on the same. "day, and it shall happen. "by reason that a sufficient. " number of members liable. " to serve are not present in-"the house, that successive "lists cannot be formed, in " manner aforesaid, upon all "such petitions; yet the. "house may nevertheless "proceed to form the list-"or lists, and appoint the "select committee or com-" mittees upon one or more " of such petitions, as far as "they are enabled so to do " by the number of members "present, and may, after " such appointment, proceed " to any other business; and "the order or orders for "taking the remaining pe-" tition or petitions into conment of nominees, as to the other business of the house upon such occasions. Some additional

Provisions of 42 Geo. S. c. 84

sideration shall be adjourned, as directed by the said recited acts, in cases where e petitions cannot be taken into consideration on the day appointed for want of sufficient attendance. § 6. "Provided always, and be it further enacted, that it shall be lawful for the petitioners and other parties, and their counsel or agents, to withdraw from the house as soon as the lists of fortynine names shall have been drawn, in order to form the committee for the trial of such petition respectively; and for the clerk appointed duced list in the time intervening between any two - ballots; and the members remaining upon any of the said reduced lists, together with the two members who shall be appointed as nominees, shall be sworn at The table, and shall be at iliberty forthwith to depart from the house. § 7. "Provided also, and • be it further enacted, that "when, on a complaint by a " petition of an undue elec-

tion or return, there shall

"be more than two parties

"before the house on dis-

tinct interests, or com-

"plaining or complained of

" upon different grounds, the

" thirteen members returned " to the house, by virtue of " the aforesaid act, passed in "the eleventh year of his " present majesty's reign, 42. § 6. ante, " shall not choose their no- 47, 48. "minees until all the other " select committees to be bal-"lotted for on that day shall " have been sworn: provided "also, that if two or more " committees shall be appointed on the same day. "to decide on any petition " whereon there shall be more "than two parties as afore-" said before the house, the " committee which shall have " been first ballotted for shall " have the preference in the " choice of members to serve 53 Geo. 3. c. " as nominees.

§ 8. "And be it further "enacted, that every such "committee appointed for "the trial and determination " of any petition under and "by virtue of the said re-"cited acts, and of this act, "shall or may be attended "by a person well skilled in "the art of writing short "hand, who shall be espe-"cially appointed by the " clerk of the house of com-"mons for the time being. "and sworn by the chairman " faithfully and truly to take "down, in short hand, the "evidence adduced before "the said committee; and "from day to day, as occa11 Geo. 3. c.

(See 47 Geo. 3. sess. 1. c. 1. § 2. post, 52. 71. § 20. pest,

Sect. 1.
Provisions of 42 Geo. 3. c. 84.

provisions were also made with respect to taking the evidence before select committees.

This act, which was to continue for a limited time, was suffered to expire, but the stat. 47 Geo. 3. sess. 1. c. 1.(a) revived it, and made it perpe-

"sion may require, to tran-"scribe, or to cause the same "to be transcribed, in words "at length, for the use of the said committee.

§ 9. "And be it further enacted, that this act shall continue in force two years, and from thence till the end of the session of parliament next after the expiration of the said two years, and no longer."

(a) The stat. 47 Geo. 3. Sess. 1. c. 1. "An Act to "revive and make perpetual, and to amend an Act, made in the furty-second Year of his present Majesty, for the further Regulation of the Trials of controverted Elections, or Returns of Members to serve in Parliament, and for expediting the Proceedings relating thereto." [A. D. 1807.]

42 Geo. 3. c. 84. ante, 47. "Whereas it is expedient
that an act, made in the
forty-second year of the
reign of his present majesty, intituled, An act for the
further regulation of the
trials of controverted elections, or returns of members, to serve in parliament,
and for expediting the pro-

" ceedings relating thereto. "which was to continue in " force two years, and from "thence till the end of the " session of parliament next " after the expiration of the "said two years, and no "longer, should be revived " and made perpetual:" " Be " it therefore enacted, by the "king's most excellent ma-" jesty, by and with the ad-"vice and consent of the "lords spiritual and tem-" poral, and commons, in this " present parliament assem-" bled, and by the authority " of the same, that the said re-"cited act shall, from and " after the passing of this act. " be, and the same is hereby " revived, and the said recited " act shall be, and the same is " hereby made perpetual. § 2. " Provided always,

"and be it enacted, that

"whenever, on any com-

" plaint by petition, under

" or by virtue of any act or

"acts for the regulation of

"the trials of controverted elections, or returns of

" members to serve in parlia-

"ment, it shall happen that

"the thirteen members re-

"turned to the house of

tual; the legislature at the same time taking occasion by this latter act, to make some further Provisions of regulations with regard to the appointment of 1. c. 1. nominees.

These several statutes have been followed by that of the 53 Geo. 3. c. 71. (a) which was passed

" commons under the direc-"tions of the said acts, or " any or either of them, shall " be entitled, by virtue of any " regulations or provisions in " any of the said recited acts, " to choose two members or mte, "one member (as the case "may require) to be added " to the thirteen members " for the completion of the .84. " committee to try such pemte, " tition, such thirteen mem-" bers shall not choose such "two members or one mem-"ber to be added as afore-" said, until all the other "select committees to be "ballotted for on that day " (in the appointing of which "the parties before the " house shall name two mem-"bers to be added to the "members drawn by lot) " shall have been sworn, if " such committees, or any of "them, can be completed: "provided also, that if two " or more committees shall "be ballotted for on the " same day, for the comple-"tion of which it shall happen "that the thirteen members

" returned to the house shall " be entitled to choose two " members or one member as " aforesaid, then the thirteen " members on the committee " or committees which shall "have been first ballotted "for, shall have the pre-" ference successively " choosing such member or "members for the com-" pletion of such committee " or committees." (a) The stat. 53 Geo. 3. c. 71. " An Act for amending " and rendering more effectual " the Laws for the Trials of con-" troverted Elections and Re-" turns of Members to serve in " Parliament." [A.D. 1813.] "Whereas divers acts of " parliament have been made "for regulating the trial of "controverted elections or " returns of members to serve " in parliament: And whereas "it is expedient that further " regulations should be made " for that purpose;" " Be it " enacted by the king's most " excellent majesty, by and " with the advice and con-" sent of the lords spiritual

Sect. 1. Provisions of 53 Geo. 3. c. 71. to amend the law and render it more effectual, as to several points, upon which it was considered to be capable of improvement.

"and temporal, and com-"mons, in this present par-" liament assembled, and by " the authority of the same, " that in all cases of contro-" verted elections, or returns "of members to serve in " parliament for Great Bri-"tain, all the parties com-plaining of or defending "such elections or returns " shall by themselves or their agents deliver in to the " clerk of the house of comof mons, lists of the voters in-" tended to be objected to, "to be by the said clerk " kept in his office, open to " the inspection of all parties "concerned; giving in the " said lists the several heads " of objections, and distin-"guishing the same against "the names of the voters " excepted to; and that such "lists shall be so delivered "in upon all controverted "elections and returns for " Scotland, or for any county "in England or Wales, ten "days at least before the "day appointed for the consideration of the petition " complaining of such elec-"tion and return; and upon other controverted " elections or returns for " England or Wales, five days " at least before the day ap-" pointed for the considera-

"tion of such petition: pro-"vided always, and be it "enacted, that if the con-" sideration of any such peti-"tion shall be postponed by " order of the house during "the same session, or shall " be renewed at the com-" mencement of another ses-" sion, it shall be sufficient if " such lists shall be so de-" livered within such periods "as are hereby directed, " before the committees "for the trial of such peti-"tions shall be actually ap-

" pointed. § 2. " And be it further "enacted, that no evidence " shall be adduced before the " select committee appointed " for the trial of the petition " upon which such list shall "have been delivered in, "against the validity of any " vote upon any head of objec-"tion to such voter, other than " one of the heads so specified " and particularized against "him in such list as afore-" said; and that if any ground " of objection shall be stated "against any voter in such "lists, and no evidence shall "be produced before such " select committee, to sub-"stantiate such objection, "and if such select com-" mittee shall be of opinion "that such objection was

The points to which such amendments have been directed are those which regard the ex-

Sect. 1. Provisions of 53 Geo. 3. c. 71

" frivolous or vexatious, the " said committee shall re-" port the same to the house " of commons, together "with their opinion on "the other matters relat-"ing to the said petition; "and the party or parties " opposite shall in such case " be entitled to recover from "the party or parties by "whom or on whose behalf "any such objections were "made, the full costs and " expences incurred "reason of such frivolous " or vexatious objections; "which costs and expences "shall be ascertained and "recovered in the same "manner and form as are "now provided by law for "the recovery of costs and "expences in cases of fri-"volous or vexatious peti-" tions.

§3. " And whereas it is ex-" pedient that provision shall " be made to ensure the more "punctual payment of all "costs, expences, and fees "which may become due to "witnesses, officers of the "house, and parties, by rea-" son of the 'trial of contro-"verted elections;" "be it further enacted, that no "proceeding shall be had "on any petition by virtue " of any act concerning the " trial of controverted elec-"tions and returns, unless "the person or persons sub-

" scribing the same, or some " one or more of them, shall "within fourteen days after "the same shall have been " presented to the house, or "within such further time Sec 28 Ge.o 3. " as shall be limited by the c. 52. § 5. ante. "house, personally enter into 25. "a recognizance to our "sovereign lord the king, " according to the form here-" unto annexed, in the sum " of one thousand pounds, " with two sufficient sureties " in the sum of five hundred " pounds each, for the pay-" ment of all costs, expences, "and fees which shall be-"come due to any witness " summoned in behalf of the " person or persons so sub-"scribing such petition, or "to any clerk or officer of " the house upon the trial of " the said petition, or to the " party who shall appear be-"fore the house or com-" mittee in opposition to such " petition, in case such per-"son or persons shall fail " to appear before the house "at such time or times as " shall be fixed by the house "for taking such petition "into consideration; or in " case the said petition shall "be withdrawn by the per-" mission of the house; or in " case such committee shall "report to the house that " the said petition appears to "them to be frivolous or "vexatious; and if at the

Provisions of 38 Geo. 3, c. 71. change of lists of votes intended to be objected to on either side upon the trial of a petition, and

" expiration of the said four-"teen days, such recogni-" zance shall not have been " entered into, or shall not " have been received by the "speaker of the house of " commons, the speaker shall "report the same to the "house, and the order for "taking such petition into " consideration shall there-"upon be discharged, unless " upon matter specially stated " and verified on oath to the satisfaction of the house, "the house shall see cause to " enlarge the time for enter-" ing into such recognizance; "and whenever such time " shall be so enlarged, the " order for taking such pe-"tition into consideration " shall, if necessary, be post-" poned, so that no such pe-"tition shall be taken into " consideration till after such "recognizance shall have "been entered into and re-"ceived by the speaker: " provided always, that the " time for entering into such " recognizance shall not be " enlarged more than once, " or for any number of days " exceeding thirty.

§ 4. " And be it enacted, "that eight days at least "before the person or per-"sons so petitioning shall "enter into the said recog-"nizance, he or they, by " themselves or their agents, " shall deliver in writing to

"the clerk of the house of " commons, the names of the " sureties who are proposed " to enter into such recog-" nizance; which names shall " be entered in a book to be " kept by the said clerk, in "his office, open to the in-" spection of all parties con-" cerned.

§ 5. " And be it further "enacted, that the said re-" cognizance shall be entered " into, and that the sufficiency "of the sureties named "therein shall be allowed " and judged of in like man-" ner and under such regu-" lations as are enacted by "an act passed in the twenty-" eighth year of his majesty's " reign, and intituled an act § 6. " for the further regulation of ante "the trials of controverted " elections or returns of mem-" bers to serve in parliament, " with respect to the recog-" nizance therein directed to " be entered into by persons "presenting petitions com-" plaining of undue elections

" or returns. § 6. " Provided always, " and be it further enacted, "that it shall and may be " lawful for the same per-"sons, if sufficient, to be-"come sureties in the re-"cognizance herein directed, "and in the recognizance " directed by the said recited " act, and that the names of "the sureties who are pro-

the evidence thereupon as connected with such lists; the recovery of costs from parties making Provisions of

Sect. 1. 53 Geo. 3.c. 7

" posed to enter into the said "last mentioned recogni-" zance shall be in like man-" ner delivered to the clerk of the house of commons, "and entered by him as is " herein-before directed with "respect to the sureties in " the said first-mentioned re-

" cognizance. § 7. " And be it further " enacted, that in all cases "where any question shall " arise, as to the amount of "the reasonable costs, ex-" pences or fees, which shall " be due and payable to any "witness, or to any clerk or officer of the house of com-" mons, upon the trial of any such petition, the speaker of the said house shall, on application, direct the same to be taxed by such persons "and in like manner as by "the said recited act is directed for the taxing of costs and expences in all cases where petitions or ** the opposition to such pe-4 titions have been declared " to be frivolous or vexatious; s and the persons so autho-"rized and directed to tax such costs, expences and "fees, shall and they are 46 hereby required to examine " the same, and to report the

"amount thereof to the

" speaker, who shall, on ap-

"plication, deliver to the

"person or persons con-

" cerned, a certificate, signed "by himself, expressing the " amount of the fees, costs "and expences allowed in "such report; and the per-"sons so appointed to tax "such costs, expences and " fees, are hereby authorized " to demand and receive for "such taxation and report, "such fees as shall be from "time to time fixed by any "resolution of the house: " and the said certificates, so " signed by the speaker, shall "be conclusive evidence of "the amount of such de-"mands; and the witness, "officer, or party claiming " under the same shall, upon " payment thereof, give a re-"ceipt at the foot of such "certificate, which shall be " a sufficient discharge for

"the same. § 8. " And whereas it is 28 Geo. 3. c. "enacted by the said re- 52. § 8. ante, "cited act, that the house 27. "shall not permit any peti-"tion complaining of an un-"due election or return to "be withdrawn, except in "the cases therein mention-" ed;" "be it further enact " ed, that it shall and may be "lawful for the house to per-" mit any such petition, on "any petition presented in "pursuance of the said re-"cited act, to be withdrawn "upon matter which shall " have arisen since the same

Sect. 1. rovisions of 3 Geo. 3. c. 71. frivolous or vexatious objections to voters; the increasing and regulating the recognizances re-

"was presented, and which shall be specially stated and verified on oath to the satisfaction of the house.

" tisfaction of the house. § 9. "And be it further " enacted, that in all cases "where the petitioner or "petitioners shall fail to "appear before the house "by himself or themselves, "or by his or their coun-"sel or agents, at the time "fixed for the appoint-"ment of the select com-" mittee, the house not having " permitted such petition to "be withdrawn, and the or-" der for the consideration of " such petition shall be there-"upon discharged in pur-" suance of the said recited "act of the twenty-eighth " year of his majesty's reign, "the party or parties who " shall attend the house in " opposition to such petition " shall in like manner be en-" titled to recover from such " petitioner or petitioners the "full costs and expences "which they shall have in-"curred by reason of such " petition.

§ 10. "And be it further enacted, that in all cases the persons so authorized and directed (in pursuance of this act, or of the said recited act) by the speaker of the house of commons, to tax such costs and expences, shall allow all

" reasonable costs as between attorney and client.

§ 11. " And be it enacted, " that each of the persons so " authorized and directed by "the speaker of the house " of commons, in pursuance " of the said recited act or "this act, to tax such costs, " expences, or fees, and also "any master of the high " court of chancery, or any " of his majesty's justices of "the peace, shall be, and " they and each of them are " hereby authorized and em-" powered to take any affidavit " relative to such costs, ex-"pences or fees, or the "taxation or non-payment "thereof, and to administer "the oath for taking such " affidavit; and also that each " of the persons who shall be "authorized to examine the " sufficiency of sureties to be " named in the recognizances " mentioned in the said act " or this act, (besides the " persons therein mention-"ed,) shall have power and "authority to take any affi-" davit relative to such sure-"ties, or to the entering into "any recognizance, and to "administer the oath for " taking such affidavit; and " that all and every person or " persons convicted of wil-"fully false swearing in any " such affidavit or affidavits, " shall be deemed guilty of,

quired of petitioners, and their sureties; the taxation of costs and expences of witnesses, and Provision:

Sect. 53 Geo. 3.

" and suffer the penalties on " persons convicted of wilful " and corrupt perjury.

§ 12. " And be it enacted, "that if the petitioner or " petitioners who shall have " entered into such recogni-"zance as aforesaid shall "neglect or refuse, for the "space of seven days after " demand, to pay to any wit-"ness who shall have been " summoned on his or their " behalf before the house, or " such select committee, on " the trial of the said petition, "the sum so certified as " aforesaid by the speaker to " be due to such witness, to-"gether with the further sum of forty shillings per " diem for every day during "which such petitioner or " petitioners shall delay to " satisfy the same; or if such " petitioner or petitioners "shall neglect or refuse, for "the space of six months "after demand, to pay to " any officer of the house, or " to any party who shall ap-" pear in opposition to their "said petition, the sum so " certified by the speaker in "pursuance of this act, or " of the said recited act of "the twenty-eighth year of "his majesty's reign, to be " due to such officer or party "for their fees, costs, or "expences, and that such "neglect or refusal shall be

" proved to the speaker's sa-" tisfaction by affidavit sworn "before any master of the " high court of chancery, and "such master is hereby au-" thorized to administer such " oath, and is authorized and "required to certify such " affidavit under his hand; in " every such case such person " or persons shall be held to "have made default in his " or their said recognizance: "and the speaker of the "house of commons shall "thereupon certify such re-"cognizance into the court " of exchequer, and shall also "certify, that such person " or persons have made de-" fault therein, and such cer-"tificate shall be conclusive "evidence of such default. "and the recognizance being " so certified shall have the " same effect as if the same " were estreated from a court " of law: provided always, "that such recognizance and "certificate shall in every "such case be delivered by " the clerk, deputy clerk, or " one of the clerks assistant " of the house of commons, " into the hands of the lord "chief baron of the ex-"chequer, or of one of the "barons of the exchequer, " or of such officer as shall "be appointed by the said " court to receive the same. § 13. " And be it further Sect. 1.
Provisions of 53 Geo. 3. c. 71.

clerks or officers of the house of commons; the withdrawing petitions in certain cases; the dis-

"enacted, that in any ac-"tion which shall be com-" menced for the recovery of "any costs, expences, or " fees which shall have been " certified by the speaker, in " pursuance of this act or the "said recited act, to be due "and payable, such certifi-" cate so signed as aforesaid " by him, shall have the force "and effect of a warrant of "attorney to confess judg-"ment; and the court in "which such action shall be " commenced shall upon mo-"tion, and on the produc-"tion of such certificate, " enter up judgment for the " sum specified in such certi-"ficate to be due from the " defendant or defendants in "such action, in like man-" ner as if the said defendant " or defendants had signed a "warrant to confess judg-" ment in the said action to " that amount.

§ 14. "Provided always, and be it further enacted, that the several rules and regulations herein before enacted, by which certain persons are directed to enter into recognizances, and by which certain persons are made liable to the payment of costs to the opposite parties, in the particular manner and in the several cases herein before specified, shall not be con-

"strued to apply to the case
"of any petition presented
"in pursuance of the said re"cited act of the twenty"eighth year of his majesty's
"reign, and relating solely
"to any question or ques"tions respecting the right
"of election, or of choosing,
"nominating, or appointing a
"returning officer or officers.
§ 15. "And whereas, by 2

" the said act passed in the "twenty-eighth year of the "reign of his present ma-" jesty, it is provided, that -" any person or persons may, " within twelve calendar "months, present a petition " to the house, opposing any " such determination respect-"ing the right of election, " or the right of choosing, "nominating, or appointing "such returning officer or " returning officers, or with-"in fourteen days after the " commencement of the next " session of parliament after "that in which such deter-"mination shall have been " reported to the house, and " that forty days shall inter-"vene between the day of " presenting such petition to "the house and the day "appointed for taking the " same into consideration: "and the allowing of so " much time for the purpose "aforesaid has been found " to be inconvenient and uncharging petitions upon the non-appéarance of petitioners, the payment and taxation of costs

Sect. 1.

Provisions of 53 Geo. 3. c. 71.

"necessary; be it enacted. " that whenever any such re-" port with respect to such "rights, any or either of "them, shall be made to the " house, it shall and may be "lawful for any person or " persons, within six months " next after the day on which " such report shall have been " made to the house, or in " case such six months shall " end between the time when "the present or any future "parliament shall be dis-" solved or shall expire, and "the day on which the next " parliament shall meet; or "in case such six months shall "expire during any recess, "either by the prorogation " of parliament, or by the ad-"iournment of the house of " commons for fourteen days "intervening between the "day of adjournment, and " the day to which the house " shall be so adjourned, then "within fourteen days next "after the first day of the " next parliament, or of the "next session of the same " parliament, or of the next "meeting of the house of " commons, as the case may " be, to petition the house "to be admitted as a party "or parties to oppose those "rights any or either of "them, which shall have "been deemed valid in the "judgment of such select

" committee; and that such " petition when presented "shall be ordered by the " house to lie on the table till "such six months, or such " fourteen days as aforesaid, "shall be expired; and that "within twenty-one sitting "days after the expiration of " such six months or fourteen "days, a day and hour shall " be appointed by the house "for taking the same into " consideration, so that the "space of fourteen days at "the least shall always inter-" vene between the day on "which such order shall be " made and the day appointed " by the house for taking the "same into consideration; and such day and hour " may from time to time be "altered, as to the house " shall seem fit; and notices " of such day and hour, and " of such alteration thereof. "shall be sent to the several " persons who have petitioned "the house respecting such "rights, in like manner as is "done in other cases; any "thing in the said last-men-"tioned act to the contrary " notwithstanding.

§ 16. "And whereas it is "not fit that any member having served on a select committee, who shall have reported to the house their determination with respect to the right of election, or

Sect. 1. 53 Geo. 3. c. 71.

in such cases: the examination of the sufficie Provisions of Of sureties upon the recognizances of petit

> "the right of choosing, no-" minating or appointing any " returning officer or return-"ing officers, under and by "virtue of the said recited "act, should also serve on a " select committee to be ap-" pointed to try the merits of " a petition opposing such de-"termination:" "be it enact-" ed, that if upon the appoint-" ment of any such last-men-"tioned select committee, "the name of any member " shall be drawn who served " on such former committee. "and was present at the "time of such determination. " his name shall be set aside. § 17. "And whereas by "the said recited act, cer-"tain notices and reports "are ordered to be given "and inserted in the next " London Gazette, which di-"rection cannot in many "cases be complied with: " be it enacted, that in all " cases where any such no-"tice or proceeding is di-" rected to be published in "the next London Gazette. "it shall be sufficient if the " same is published in one of "the two next London Ga-" zettes; any thing in the said "act to the contrary not-" withstanding.

§ 18. " And for avoiding "and preventing all doubts " respecting the appointment " of any select committee,

" under and by virtue o "act concerning the tr "controverted elections " returns, by reason of " of the members of the "committee not being " qualified to serve upon " committee;" "beit ena " that every select comm "which shall be appoi " under and by virtue o " said acts or any of tl "shall be deemed and t "to have been and to " legally appointed, from "after the time of any "select committee ha " been sworn at the tab " the usual manner.

§ 19. " And whereas dc "have arisen as to the "thority of such select c "mittees to examine "witness any person "may have subscribed "petition, to try and de " mine which such comm " shall have been appointed "be it hereby declared " enacted, that it is and a " be lawful for any such " lect committee, duly " stituted for the trial of "troverted elections or "turns, to examine any " son, although he shall ! "subscribed such petit "except it shall other " appear to such commi "that such person shall " an interested witness. § 20. " And whereas ers; the forfeiture of recognizances on nonpayment of costs of witnesses, and money due Provisions of

Sect. 1. 53 Geo. 3, c. 71.

"an act passed in the eleventh " year of his present majesty, "and intituled An act to ex-" plain and amend an act made "in the last session of parlia-" ment, intituled, An act to re-" gulate the trials of contro-" verted elections, and of re-"turns of members to serve in "parliament, it is among " other things enacted, that "in the cases therein pro-"vided, the thirteen members whose names shall be " returned by the parties to "the house, shall by themselves choose two mem-"bers then present in the "house to be added to the " said thirteen members;" " be it enacted, that either of s the members so chosen " shall or may be set aside for any of the same causes s as those chosen by lot.

Form of Recognizance referred to in this Act.

" BE it remembered, That < on the day of in the year of our Lord before speaker of the house of commons) or, (one of his majesty's justices of "the peace for the county of) came C. D. E. F. " and J. G. and severally acknowledged themselves to owe "to our sovereign lord the * king the following sums ; that " is to say, the said C. D.

"the sum of one thousand " pounds, and the said E. F. " and the said J. G. the sum of "five hundred pounds each, " to be levied on their respec-" tive goods and chattels, lands " and tenements, to the use of " our said sovereign lord the " king, his heirs and succes-" sors, in case the said C. D. " shall fail in performing the " condition hereunto annexed.

THE CONDITION of " this recognizance is, that " if the said C. D. shall well " and truly pay all costs and " expences and fees which " shall be due and payable " from the said petitioner to "any witness who shall be " summoned to give evidence "in his behalf, or to any " clerk or officer of the house " of commons, upon the trial " of the petition signed by the " said C. D. complaining of " an undue election or return " for the [here state the "county, city, borough, " or district of burghs] or " complaining that no return " has been made for the said within the time " limited by act of parlia-"ment, or that the return " made for the said " is not a return of a mem-" ber or members according "to the requisition of the " writ: And if the said pe-" titioner shall also well and Sect. 1.
Provisions of 53 Geo. 3. c. 71.

by reason of delay of payment, and the consequences of such forfeiture; the further limitation of the time for presenting petitions of appeal as to rights of election, or of appointment of returning officers, and the regulation of the proceedings in such cases; together with some additional provisions respecting the notices, directed by the 28 Geo. 3. c. 52., and other matters relating to the trial of petitions, examination of witnesses, and appointment of nominees.

It is to be observed that the tribunal which is thus constituted being the creature of these several statutes, can only attach in cases which are immediately within their letter; hence, as will be subsequently seen, the question often arises, whether the subject matter of a petition is, or not, within them.

Strictly speaking, the original jurisdiction of the house of commons is merely broken in

"truly pay the costs and ex"pences of the party who
"shall appear before the
"house in opposition to the
"said petition, in case the
"said petitioner shall fail
"to appear before the house
"at such time or times as
"shall be fixed by the house
"for taking such petition
"into consideration; or, in
"case the said C. D. shall
"withdraw his said petition

"by the permission of the house; or, in case the select committee appointed by the house to try the matter of the said petition, shall report to the house that the said petition appears to them to be frivolous or vexatious; then this recognizance to be void, otherwise to be of full force and effect."

upon, so far as the new jurisdiction is given, the statutes only operating to exclude the one, in proportion as they have substituted the other.

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But the house, in withdrawing its consideration from such subjects, upon the alteration introduced by the acts, in order to give the fullest effect to the now existing law, has not decided with technical nicety, upon the line of distinction; and has in many instances, though it should seem that the statutes (a) did not necessarily call upon them to do so, rejected petitions of a nature not immediately (though very nearly) within the scope of the statutes, and which they would before have entertained.

The jurisdiction of select committees never attaches but upon a petition, and therefore in matters which are not thus made cognizable by such committees, the powers of the house remain as before.

The resolution in Glanville, in the case of Glanv. 119. Middlesex, "that the house may of themselves question any election or return, although no party grieved do ever complain," is still to be

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(a) See the cases of Lyme —Bedfordshire, 1784, post, Regis, 1727, post, 68.— 72.—Colchester, 1789, post, Bridgewater, 1768, post, 69. 73.—Bodmin, 1790, post, 73.—Worcester, 1781, post, 70. —Middlesex, 1802, post, 74.—Westminster, 1784, post, 70.
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regarded as the law of parliament, and it is open to the house to examine all matters relating to elections as before, except upon petitions in the cases where these acts have specifically directed another course.

Inte, 1 vol. 74, where see the eferences.) Thus, the eligibility of Mr. Horne Tooke, in the before-mentioned case of Old Sarum, in 1801, was brought in question and discussed, not upon petition, but upon a motion for a new writ, upon the ground of his incapacity, by a member of the house (a). It should be observed however that this proceeding was not resorted to until the time for petitioning against the return had elapsed.

SECTION 2. In what cases resort may or may not be had to such jurisdiction.

IT has been already mentioned that a party having ground of complaint upon election mat-

(a) The course has been the same when it has been considered that there has been a ground of expulsion from the house. See the proceedings in the case of Lord Cochrane, who having been convicted of a fraud

upon the stock-exchange, by exciting false rumours whereby the funds were raised, was expelled the house. 23d, 24th, 29th June, and 5th July, 1814. 69 Journ. 374. 381. 407. 427, at seq and see the references of the cases, 1 vol. 117, et seq.

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ters, can only obtain relief by petition to the house of commons. It is therefore necessary to inquire both generally into the nature of the cases which are proper for such petitions, and into the particular requisites of the law with respect to the petitions themselves. The present chapter will be confined to the former of these inquiries.

It is competent to any person to offer a petition to the house of commons upon any subject, provided he can prevail upon a member to present it; but with regard to an election petition, it must come within some one of certain descriptions to ensure its reception in the house.

The restrictions of the law, in this respect, depend partly upon the directions and necessary effect of the statutes, and partly upon the practice of the house.

The statutes have, in certain cases, directed that election petitions should be put under the consideration of select committees; and the necessary consequence is, that such cases are taken away from the jurisdiction of the house, just so far as jurisdiction is given to such committees. This latter jurisdiction must be taken

See post, 79, ets eq

in the manner, and with the qualifications under which it is given. These will appear in the course of the following chapter.

With respect to the restrictions alluded to as depending upon the practice of the house, they appear to have grown up since the passing of the Grenville act, in consequence of, and in unison with the statutes, rather than to have formed any part of the settled law of parliament before that time.

These latter restrictions are such as aim at petitions, not of candidates, or of electors petitioning in their favour, but of persons denying the pretensions of candidates, or electors so petitioning.

Counter petitions formerly house.

Petitions of these and the like descriptions (a), received by the were formerly received by the house, as appears from the cases of Lyme Regis, 2d, 3d, 17th, and

> (a) In the case of East Retford, Glanv. 129. A petition of electors was presented against the return of Mr. Darcy, supposing it to be void; and also another petition, supposing Mr. Darcy to be duly elected, charging certain persons with undue practices, to have procured the election of Sir Edward

Wortley, the other candidate. This latter petition was re-ceived and gone into, al-though Mr. Darcy died before the hearing of the case. The other petition was held to be not examinable, it not being suggested that Sir Edward Wortley's election was good, but only that Mr. Darcy's was void.

Feb. 1727 (a), Bridgewater, 10th and 18th 21st Nov. 1768 (b), and indeed from the 21 Journ. 33. ciple of the latter decision in that of West- 32 Journ. 28 ter, 25th May, 1784(c); but since these acts. eliminary question has been raised in many , whether the petitions did or did not come in their operation; and in several instances. ions have been rejected, upon the ground of tatutes not reaching them, and that if such ions were to be entertained at all, it must y the house; the effect of which would be, trials respecting the same election would be g on in different jurisdictions.

35. 58. 68. 44. 48. 301.

2d February, 1727 .--Ienley petitioned against eturn of Mr. Burridge. h February, a petition presented from certain ors, alleging that Mr. dge and the other sitmember were elected, majority of legal votes, raying such relief as the should think fit against retensions of Mr. Henbe one of the burgesses e said borough. The referred the consideraof this petition to the nittee, with instructions ear the matter thereof, e same time with that r. Henley's petition .- 21 a. 33. 35. 58. 68.

Bridgewater, 10 and lovember, 1768, a petifrom the mayor, alderand capital burgesses presented, setting forth

that the right of election was in them only, and complaining that at the last election, the then mayor being returning officer, admitted a number of persons to vote, under colour of their being inhabitants, paying scot and lot. -21st Nov., a petition of one of the aldermen, with some of the capital burgesses, taking notice of the above petition, alleged the right of election to be in the inhabitants paying scot and lot, and praying to be heard thereto by their counsel, was presented, and the house ordered that it should be heard at the same time with that of the petitioning candidates. And all these parties were heard accordingly on the 9th March, 1769. 32 Journ. 28. 44. 48. 301. (c) See post, 70.

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Provisions of 53 Geo. 3. c. 71.

clerks or officers of the house of commons; the withdrawing petitions in certain cases; the dis-

"enacted, that in any ac-"tion which shall be com-" menced for the recovery of "any costs, expences, or " fees which shall have been " certified by the speaker, in " pursuance of this act or the " said recited act, to be due "and payable, such certifi-" cate so signed as aforesaid " by him, shall have the force " and effect of a warrant of "attorney to confess judg-"ment; and the court in "which such action shall be " commenced shall upon mo-"tion, and on the produc-"tion of such certificate, " enter up judgment for the " sum specified in such certi-"ficate to be due from the " defendant or defendants in " such action, in like man-" ner as if the said defendant " or defendants had signed a "warrant to confess judg-" ment in the said action to " that amount.

§ 14. "Provided always, and be it further enacted, that the several rules and regulations herein before enacted, by which certain persons are directed to enter into recognizances, and by which certain persons are made liable to the payment of costs to the opposite parties, in the particular manner and in the several cases herein before specified, shall not be con-

" strued to apply to the case " of any petition presented " in pursuance of the said re-"cited act of the twenty-" eighth year of his majesty's "reign, and relating solely "to any question or ques-"tions respecting the right " of election, or of choosing, " nominating, or appointing a " returning officer or officers. § 15. "And whereas, by 28 "the said act passed in the 3. "twenty-eighth year of the § 2 "reign of his present ma-" jesty, it is provided, that " "any person or persons may, " within twelve calendar "months, present a petition " to the house, opposing any " such determination respect-"ing the right of election, " or the right of choosing, "nominating, or appointing "such returning officer or " returning officers, or with-"in fourteen days after the " commencement of the next " session of parliament after "that in which such deter-"mination shall have been " reported to the house, and "that forty days shall inter-"vene between the day of " presenting such petition to "the house and the day "appointed for taking the "same into consideration; "and the allowing of so " much time for the purpose "aforesaid has been found " to be inconvenient and uncharging petitions upon the non-appéarance of petitioners, the payment and taxation of costs

Provisions of 53 Geo. 3. c. 71

"necessary; be it enacted, "that whenever any such re-"port with respect to such "rights, any or either of "them, shall be made to the "house, it shall and may be "lawful for any person or " persons, within six months " next after the day on which " such report shall have been "made to the house, or in " case such six months shall " end between the time when "the present or any future "parliament shall be dis-"solved or shall expire, and "the day on which the next " parliament shall meet; or "in case such six months shall "expire during any recess, "either by the prorogation " of parliament, or by the ad-"iournment of the house of " commons for fourteen days "intervening between the "day of adjournment, and " the day to which the house " shall be so adjourned, then "within fourteen days next "after the first day of the " next parliament, or of the "next session of the same " parliament, or of the next "meeting of the house of " commons, as the case may " be, to petition the house " to be admitted as a party "or parties to oppose those "rights any or either of "them, which shall have "been deemed valid in the "judgment of such select

" committee; and that such " petition when presented "shall be ordered by the "house to lie on the table till "such six months, or such " fourteen days as aforesaid, "shall be expired; and that " within twenty-one sitting " days after the expiration of " such six months or fourteen "days, a day and hour shall " be appointed by the house "for taking the same into " consideration, so that the "space of fourteen days at "the least shall always inter-" vene between the day on "which such order shall be " made and the day appointed " by the house for taking the "same into consideration; "and such day and hour " may from time to time be "altered, as to the house " shall seem fit; and notices " of such day and hour, and " of such alteration thereof, " shall be sent to the several " persons who have petitioned "the house respecting such "rights, in like manner as is "done in other cases; any "thing in the said last-men-"tioned act to the contrary " notwithstanding.

§ 16. "And whereas it is "not fit that any member "having served on a select committee, who shall have reported to the house their determination with respect to the right of election, or

Sect. 2. 40 Journ. 22. Such petition afterwards received (before 25 G. S. c. 84.) Ib. 41.

statutes precluded the house from entering upon the subject.—The petition, however, was presented again on the same day, and it was then ordered that it should be heard at the bar of the house, and counsel were heard accordingly, on the 28th of May, 1784.

Since this case, however, the stat. 25 Geo. 3. c. 84. has extended the jurisdiction of select committees to cases where there is no return or an insufficient return.

40 Journ. 99. It seems, a petition from electors in favour of the return of the sitting member, would not be received.

Bedfordshire, 7th June, 1784.—A petition of certain freeholders, stating that the names of certain persons, electors, who in fact had given their votes for the Earl of Upper Ossory and the Hon. St. Andrew St. John, two of the candidates, were by mistake taken down on the poll as having voted for Lord Ongley, and stating other matters in favour of the return of Mr. St. John, one of the sitting members, was offered to be presented. This occasioned some debate in the house, and, thereupon, it was not persisted in (a).

(a) The entry in the Journal runs thus: "A doubt arising in the house, whether the said petition of the said freeholders not complaining of an undue election or return, ought to be received

question being first put for the bringing up the same, or ought to be referred to the consideration of the committee to be appointed to try and determine the merits of the said Lord Ongley's petiby the house, without a tion, under the provisions of

Colchester, 16th January, 1789, a petition of certain freemen, stating that the returning of- 44 Journ. 87, ficer had made a return that there was an equal It seems that number of votes for Mr. Jackson and Mr. Tier- from electors ney. and that Mr. Tierney ought to have been one of the returned, and, therefore, praying for leave to petition, complaining of the return, was offered double return, to be presented. The matter was debated, and the debate having been adjourned till the 19th not be reof January, the motion was on that day withdrawn by leave of the house.

alleging that candidates returned upon a ought to have been returned singly, willceived.

Bodmin, 14th Dec. 1790.—The petition of 46 Journ. 62, George Hunt, Esq. an elector of Bodmin, stated See also, 2 Fra. that Mr. Hext, the mayor, had held an election, and had made a return of Sir John Morshead been holden and Roger Wilbraham, Esq., against which cer- and he had tain petitions had been presented; that Robert against which Educean, the senior capital burgess, and coun-been presented sellor of the borough, and as such claiming to be election had returning officer, had held another election, and holden by a had rejected the votes of the petitioner, and of eight others; that he had declared Sir James Laroche and John Sullivan, Esqrs. to be duly elected but had made no return of them; and that an information in the nature of quo warranto had been formation in

237 Where an election had by the mayor, made a return, petitions had stating that an also been capital burgess, who claimed to be returning officer, but who had made no return, and that an in-

16.) The several entries in tion, &c. was not persisted the case of Bridgewater, 1768 in." See also 1 Lud. 326. and 1769, were read. "And

the act" (of 10 Geo. 3. c. the offering of the said peti-

Sect. 2. the nature of quo warranto had been filed against such mayor, a petition from an the claim of the burgess (who had re-fused iris vote) was rejected by the house.

filed against Hezt. The petitioner, fearing that if the select committee should be of opinion that Eduvean was the returning officer, his franchise would be lost, by the rejection of his vote by tiuon from an elector, against Edyvean, prayed the house to take his case into consideration, and to afford him such relief as they might see fit. The house, on reading the statutes 10 Geo. 3. c. 16. 25 Geo. 3. c. 84. and 28 Geo. 3. c. 52. determined, that this petition did not come within the provisions of any of them; and the same was not delivered in at the table. The motion that it should be brought up was negatived (a).

58 Journ. 63. A petition of electors, stating that an unsuccessful candidate, who had petitioned, had not the legal majority; that he was disqualified; that he had been guilty of bribery and treating, &c.; and that he was therefore

Middlesex, 7th December, 1802.—A petition of several freeholders of the county of Middleser was read, stating, firstly, the names of the three candidates at the election; and the return of Sir F. Burdett and G. Byng, Esq.; secondly, that Wm. Mainwaring, Esq. the unsuccessful candidate, had petitioned against the return of Sir F. Burdett; thirdly, that Mr. Mainwaring had not the legal majority of votes; that he was

(a) Canterbury. There was a petition of certain electors. (John Bunyer, and others) against the pretensions of Mr. Gipps, and Sir John Honeywood, in whose favour certain other electors petitioned. One of the objections made was, that this petition did not come within the statutes. The committee refused to hear the petition, but it was upon another ground. Clifford, 357. 363. and post, 115.

disqualified, both in respect of estate, and of his holding certain offices; that he had been incompetent to guilty of bribery and treating, of using undue turn, and influence, of threatening the voters for Sir F. against his Burdett; of endeavouring to overawe the returning officer; of procuring paupers to swear themselves possessed of tenements to the value of forty shillings a year, and of endeavouring to procure a majority of votes by various other unjust, illegal, and unconstitutional means; that the petitioners were ready and willing to prove the premises aforesaid: and the petitioners further stated, "that they conceived that Mr. Mainwaring was not competent to claim the return in the manner in his petition mentioned, or to proceed upon the same against the said Sir F. Burdett, until he, Mr. Mainwaring, had cleared himself from the several charges aforesaid; and, therefore, prayed relief against the pretensions of Mr. Mainwaring to be one of the representatives for the county aforesaid."

"A motion was made, and the question being proposed, that the said question be taken into consideration, upon Tuesday, the 12th day of April, then next; at the same time that the petition of W. Mainwaring, Esq. is ordered to be taking into consideration:

" And a doubt arising, whether the matter of

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the said petition was within the provisions of any of the acts passed for the regulation of the trials of controverted elections or returns of members to serve in parliament;

"A motion was made, and the question was proposed, that the said petition does not come within the description of a petition, the proceedings upon which are regulated by any of the said acts.

58 Journ. 87.

"A debate arose upon this motion, which was adjourned to the 13th December, on which day the question was fully discussed (a); after which the question was put and carried without a division, that the petition should be withdrawn."

The result of these several cases is, that the house will not receive petitions from electors merely levelled against the pretensions of a petitioning candidate (b); or, in favour of the

(a) See the very luminous arguments on opposite sides of this question, by Mr. Tierney, and the late Master of the Rolls (Sir Wm. Grant), 1 Peckw. Introd. xxii.

(b) It seems that such charges in a petition will not be a ground for not entering upon the petition in respect of other charges. In the case of Caermarthenshire,

1803, the petition of Mansell Philipps, an elector contained charges of briber and treating not only agains the sitting member but agains the petitioning candidate, and that petition was heard. Peck. 286. There were also petitions framed in the same way in the case of Ilchester, Peck. 237, 238, 239.

right of the sitting member; or, alleging that one of two candidates returned upon a double return should have been returned singly; or, in support of the title of the person who had acted as returning officer, and in opposition to the claim of another who disputed that title; or, alleging that a petitioning candidate was disqualified, and that he had been guilty of bribery and treating.

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Nevertheless it will appear that although the house does not receive such petitions, no injustice is effected by such refusal, inasmuch as it is competent to the committee, when upon the trial of a petition, to entertain any objection to a petitioner, without any such petition.

SECTION 3. Scotland.

THE jurisdiction of select committees having been established subsequently to the union, the acts herein-before mentioned operate equally with regard to elections in *Scotland*.

SECTION 4. Ireland.

THE legislature in Ireland had created a ju-

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risdiction analogous to that in *England* for the trial of controverted elections, which depended upon several acts of parliament, introduced soon after the corresponding statutes in *Great Britain*.

App. cccxxxviii.

Moreover, upon the union with Ireland, the stat. 42 Geo. 3. c. 106. provided that all the rules, regulations, authorities, and powers given or prescribed by any act or acts of the parliament of Great Britain, in force at the time of passing the act of union with respect to petitions complaining of undue elections, or returns of members to serve in parliament, or complaining of the omission or insufficiency of any such return, and with respect to petitions of persons desiring to oppose any right of election, or of appointing returning officers, which shall have been deemed valid by the determination of any select committee, and with respect to . the trial and determination of all such petitions by such select committees, should be in force, with respect to all future petitions, complaining of undue elections or returns of members for places in any part of the united kingdom, or of the omission or insufficiency of returns, or from any person or persons desirous to oppose any such right of election, or of appointing returning officers.

CHAPTER II.

OF ELECTION PRTITIONS.

- SECTION 1. Of the nature of election petitions, as founded upon or regulated by the statutes.
- SECTION 2. Of the time within which election petitions must be presented.
- SECTION 3. Who may be petitioners in election petitions.
- SECTION 4. Of objections to petitioners in election petitions appearing upon the face of the petitions.
- SECTION 5. Of objections to petitioners in election petitions not appearing upon the face of the petitions.
- SECTION 6. Of the form of election petitions, and the degree of minuteness required in the allegations therein.
- SECTION 7. Of supplemental election petitions.
- SECTION 8. Of renewing election petitions.
- SECTION 9. Of withdrawing election petitions.
- SECTION 10. Scotland.
- SECTION 11. Ireland.

THE several acts of parliament (a) which have been pointed out in the preceding chapter

(a) It may be proper, before trial of controverted elections, we go into detail upon the to mention that, if a person

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together form the existing code of laws for the trial of controverted elections, in the application

be returned for two or more places, he is to make his option: but Lord Glenbervie remarks that it is improper that a person so returned should in any instance make his option before the fortnight for petitioning is expired, because till then, either of his elections may be complained of. See the observations, 3 Doug. Pref. xii. The authority for this proposition may be found in the following case of Sir James Lowther: although that was a renewed petition, the same principle would apply. Nor after the fortnight, if there is a petition against his election for either of the places, can he make his election for one of them, till the merits of the election complained of are decided. Ib. where see the reasons of these rules.

By the effect of the standing order of the house, repeated at the commencement of every session, this election is to be made within one week after the expiration of the fourteen days limited for presenting petitions, provided there be no question upon the return for that place. App. DCXIV.

Where a person is returned for two places, and a petition is presented in respect of one of them, and that petition is not tried dur-

ing the first session, the petitioners have a fortnight at the beginning of the next to renew their petition. In such case, although the member should make his election to serve for the place where his right is not disputed, yet the house will not order a warrant for a new writ to fill the seat he may have declined till the expiration of the fortnight; unless perhaps the former petitioners were themselves to inform the house that they do not intend to renew their petition.

Westmoreland, 17th Dec. Several freeholders 1774. petitioned against the election of Sir James Lowther. petition was not tried in that session. On the 7th Nov. 1775, the speaker acquainted the house that he had received a letter from Sir J. L. who was prevented by illness from attending his duty in the house, to inform him that (having received information from the several persons who were the petitioners in the then last session of parliament that they would not renew their petition), he being chosen for the county of Cumberland, and also for that of Westmoreland, made his election to serve for the former. There was no immediate information from the petitioners themselves, which

and construction of which, an infinity of questions has arisen. It is now proposed to explain more fully the enactments of these statutes, and to advert to the decisions which have taken place upon them; such decisions, though not positively binding, being something like landmarks of the law; and, if not affording what is technically termed precedent, at least shewing what has been deliberately done in cases which have come under consideration.

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As the rules applying to the different petitions which are founded upon, or regulated by the election statutes, are in some instances general, and in others particular, it will be convenient, in order to avoid repetition, to divide them into certain classes, and, instead of describing in each instance the nature of the petition intended to be referred to, to speak of it, as of a petition of one of the enumerated classes.

For this purpose, the subjects of these petitions have been arranged, according to the nature of them, into five different classes; under

have been. A motion was then the fortnight being expired made for a new writ for West- and no renewed petition premoreland in his room. But sented, the new writ was the house having had the ori- ordered. 35 Journ, 49, 425. ginal petition read, it was ne- 440.

it was thought there should gatived. On the 13th Nov.

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one or other of which the matter relating to controverted elections will for the most part fall.

Where however this is not exactly the case, the relevant matter so connected with this subject as to make it proper to be introduced, will be mentioned wherever it shall seem most applicable.

These five classes are as follow, and it will be enecessary to keep them in view.

First class of etitions.

- 1. The petitions which belong to the first class, are those wherein it is complained that there has been an undue election (a) or return (b): that is, where it is insisted that the
- (a) In order to swell the Appendix as little as possible, a certain number only of the most useful forms of petitions have been selected. These will in general afford a sufficient ground-work for others. It may however be useful to point out instances of petitions of the different classes.

For a petition complaining of an undue election, upon the ground that the returning officer had not given the notice of election within the statutable hours, Circnester, 20th Oct. 1796. 52 Journ. 45.

(b) For a petition of a

candidate complaining of an undue return, with allegations of the improper admission of some persons to their freedom, and of the rejection of others; of the improper admission and rejection of votes; of partiality in the returning officer, and of a premature close of the poll; of bribery and treating in the sitting member, and claiming a right to have been returned, See App. cccl.

For a petition against election and return, in case a petition of appeal should decided in favour of the applant, 4 Liskeard, 2 Peck. 3 4.

person elected has not been regularly chosen, or that the person returned was so returned in the (See stat. 10 room of some other who was legally intitled.

Geo. 3. c. 16. 6 1.)

2. The petitions which belong to the second second class class, are those wherein it is complained, that the return was not made before the day on which the writ was returnable; or not within fifty-two days after the date of the writ (in cases of vacancies); (See state. 25 that there has been no return at all; or, an insuf- \$10. ficient return, comprising, amongst others, double (1.) returns (a) and special returns (b), as being not according to the requisition of the writ or precept.

28 Geo. 3. c. 5%.

3. The petitions which belong to the third Third class of class, are those wherein application is made to be admitted party in the room of a member whose election or return is petitioned against; (See stat. 28 or, who is returned upon a double return; § 2, 3, 4.) and who before the consideration of the petition dies (c), becomes a peer, vacates his

See a petition of a candidate, containing charges of bribery and treating against the sitting member, &c. and alleging that he and another candidate who does not petition ought to have been returned, Ilchester, 1803. 1 Peck. 303, and 58 Journ. 29. 29th November, 1802.

(b) For a petition of electors upon a special return that no election could be made on account of riots, Knuresborough, 24th January, 1805. 60 Journ. 14.

(a) For a petition upon a double return, see App. eccclxix.

(c) For such a petition, See Ludgershall, 16th Feb. 1791. 46 Journ. 184.-Upon petitions for this purpose the house makes an order that the petitioner should be admitted a party, Ib. See the seat (a), or declares an intention of not defending the election or return (b).

Fourth class of petitions.

(See stat. 28 Geo. 3. c. 52. § 25, 26, 27, 28. 30, 31, 32.) 4. The petitions which belong to the fourth class, are those wherein application is made to be admitted party or parties to oppose a right of election (c), or a right of appointing a returning officer or officers (d), which has been determined by a select committee, and reported upon to the house.

Fifth class of petitions.

(See stat. 28 Geo.3. c. 52. § 29.) 5. The petitions which belong to the fifth class, are those wherein application is made to be admitted party or parties, to defend a right of election, or a right of appointing a returning officer, or officers, which has been determined upon by a select committee, and reported upon to the house (e).

Petitions not coming under the above classes, but occasioned by election petitions.

Although all petitions which are strictly in the nature of election petitions are comprised in these classes, the proceedings in respect of such occasionally give rise to others of a different

case of East Retford, Glanv. 128, 130, where it was held, that misdemeanors, in respect of the election of a person elected, but since deceased, were examinable notwithstanding his death.

(a) Such a petition would, mutatis mutandis, be similar to that last referred to.

(b) For such a petition, See App. ccclxxxiii.

(c) For such a petition, See App. cccclxxxv.

(d) Such a petition would, mutatis mutandis, be similar to that last referred to.

(e) For such a petition, See Liskeard, 3 March, 1804. 59 Journ, 132. nature, which however are so far connected with them, as to make it improper to omit the mention of them.

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The petitions alluded to, are those of parties. whose conduct is impugned by the charges in an election petition; or, who being conscious of the omission of some election duty which the law casts upon them, may be desirous of accounting for it; or, who having made a statement in an election petition under an impression which turns out to have been unfounded, may wish to come forward and correct it.

The following petitions were presented upon such grounds.

Colchester, 17th Feb. 1789. Mr. Angier, being 44 Journ. 125. charged in Mr. Tierney's petition with partiality 504. and misconduct at the election, as returning turning officer officer, presented a petition, praying thereby to praying to be heard by counbe heard by his counsel before the select com- legations of mittee, against the several allegations of Mr. Tierney and Mr. Jackson, who had respectively See ante, vol. 1. petitioned, in consequence of an incomplete 804. return. This course however seems to have been quite unnecessary, as Mr. Angier would have been entitled to be so heard without any peti-

l Peck. xxvi. Petition by resel against alpetition im-pugning hisSect. 1.

tion (a), it being the just and uniform practice of select committees to permit returning officers, whose conduct is directly complained of in the petition, or even if, from the nature of the petition, it may come in question (b), so to appear. The petition was ordered to lie on the table.

53 Journ. 116.
128. 148. 149.
Petition by returning officer, stating his omission to make proclamation for the election, and that he had given a defective notice, and praying that a new writ might issue.

Tewkesbury, 23d, 25th, and 27th Nov. 1797. (Where there (c) was a special return, which amounted to a return that no due election had been made), the bailiffs petitioned the house, stating that from inadvertence, they had made no proclamation, and had given notice of the election at the wrong hour; that in consequence of this defect they were apprehensive that they could not legally hold the election under the precept issued; and praying that a new writ might be ordered. The petition was ordered to lie on the table, and the prayer was ultimately complied with.

- (a) See the cases of Milborne Port, Philips, 220. Cricklade, 2 Lud. 323. Horsham, 2 Fras. 1. Steyning, 2 Nottingham, 1 Fras. 395. Peck. 77. Liskeard, 1 Peck. 110. Tewkesbury, 1 Peck. 146. Caermarthenshire, 1 Peck. 286. East Grinstead, 1 Peck. 307. Middlesex, 2 Peck. 1. London, 2 Peck. 268. Liskeard, 2 Peck.324. Middlesex, 2 Peck. 338. Rochester, Roe, App. ccccxlii.
- (b) Knaresborough, 2 Peck. 382.
- (c) Nov. 25th, 1797. A special return was made, stating the same facts, and that by reason thereof no election or return of a burgess had been made. Nov. 27th. This return was brought into the house, on which day an order was made, that all persons who would question the return, should question the same

Nottingham, 1803. A petition was presented (a), signed by certain electors, who had 58 Journ, 22 signed a former one, stating that they had learnt 1 Peck. 77. with extreme regret, that their names were Petition by affixed to a petition containing certain allegations (such as were therein mentioned) against the magistrates of the town; that they disclaimed all such allegations, having been informed, at the time that they were solicited allegations. to subscribe their names, that they were only s. c. 1 vok called upon to declare that their intention was to have voted for Mr. Coke, and praying such relief as to the house should seem meet The petition was ordered to lie on the table (c).

within 14 days next after the return was brought into the office of the clerk of the crown. December 13th, no petition having been presented in the interval, a new writ was ordered. 53 Journ. 128. 148, 149.

(a) This petition was presented on the 8th December,

(b) Honiton, 1st and 3d March, and 9th June, 1785, and 27th January, 1786.-Upon the renewal of a petition, some of those electors who had signed the petition petitioned to withdraw their names. 40 Journ. 85. 98. 527. 550. 575. 881. 886. 3 Lud. 143. See post, Sect. 8.

(c). One of the resolutions. of the select committee was. That it appeared to the committee, "that Alderman. Foxcroft (who had been employed to procure signatures. to one of the petitions) stated to those who signed the petition that it was a petition for those who would have voted for Mr. Coke, but he admitted that the major part of them were not acquainted with the allegations against the magistrates and sheriff, (the petition containing such) and that about 16 of those who signed the petition were, to his knowledge, not in Nottingham at the time of the election." 1 Peck. 87.

electors stati they had bee imposed upo when they. signed a former petition, and disclaim ing certain therein.

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SECTION 2. Of the time within which election petitions must be presented (a).

Petitions of 1st and 9d classes to be presented within 14 days after the making of the order of the house.

38 Journ. 330, et post.

1. 2. WITH respect to petitions of the *first* and *second* classes: (b)

By the effect of an order of the house, renewed at the commencement of every session (c), a petition complaining of the return of any mem-

(a) As to the time for presenting renewed petitions, see post. sect. 8.

(b) For these classes, see

ante, 82, 83.

(c) For this order, see App.

DCXIV. Lord Glenbervie observes, that the first order which appears in the Journals, for limiting the time for questioning elections to a fortnight, was made in the first parliament of Car. 1.18th Feb. 1625. (See 1 Journ. 821.) And that from the beginning of the long parliament in 1640, it was continued every new session till the 18th Feb. 1707, when it was made a standing order, viz. "That all petitions upon every new parliament, relating to elections and returns, be delivered to the clerk of the house, and be laid by him upon the table before the speaker be (See 15 Journ. chosen." This order was re-550.)

newed at the commencement of the next session on the 22d Nov. 1708. 16 Journ. 7.

The limitation of the fortnight was continued as to elections on vacancies during the continuance of a parliament. The above resolution of 18th Feb. 1707, was not afterwards renewed, but it continued a standing order, and was adhered to till 1722, when a committee was appointed 31st Oct. to consider of that order. 20 Journ. 50. And in consequence of their report, on the 21st Nov. 1722, it was discharged from being one of the standing orders of the house. Ibid. 61. Since that time the limitation after a general election has always been a fortnight, as well as after elections on an intermediate vacancy. See also Lord Glenbervie's note to the Introduction, 1 Doug. 81. (N.)

bermust be presented within fourteen days after the making of such order, and so, within the same Petitions of period after any new return shall be brought in. class.

Sect. 2. 1st and 2d

It appears from the case of Helstone, 2d April, 1781, and of Downton, 16th August, 1784, and 40 Journ. 445, Flintshire, 5th December, 1796, that in the 52 Journ. 150. computation of the fourteen days, if the day on which the return is made into the crown thirteen whole office be included, that on which the petition days of return is presented is to be excluded (a), or vice ing petition. versâ (b).

38 Journ. 330. and post, 92. and post, 93. 151. and post, There must be days between and of present-

When the house is sitting, the above limita tion is very strictly insisted upon (c).

In the case of Elgin, 20th and 23d Dec. 1774 (d), which will be presently mentioned, $\frac{35}{62}$.

The limitation of time for presenting petitions strictly adhered to if the house is sitting. 35 Journ. 59.

(a) It has been decided in the Court of King's Bench, that where the computation of time is to be made from an act done (here it would be from the making the order), the day on which the act is done is to be included in the reckoning. Thus when the law requires that a month's notice of an action should be given, the month begins with the day on which the notice Castle v. Burdett. is served. 3. T. R. 623. And where the statute (21 Jac. 1. c. 19. § 2.) enacts that a trader, lying in prison two months (i. e. lunar months) after an arrest for debt, shall be adjudged a bankrupt, that includes the day of the arrest. Glassington v. Rawlins. 3 E. R. 407. See also the cases as to computation of time, 1 vol. 501.

(b) It is to be presumed that the rule would be analogous in the other case where the time begins to run from the making the order.

(c) The time of making the return is made appear to the house by a certificate from the clerk of the crown, stating the day on which it was received in his office.

(d) See post. Sect. 10.

Sect. 2. Petitions of 1st and 2d class.

where a petition was lodged with the clerk of the house, after the rising of the house on the day on which the fortnight expired, though there were very peculiar circumstances in the case, the house. determined that it should not be received.

38 Journ. 163. Where petition was not premeeting of the house after a recess, though the delay was accounted for. the house refused to receive

So in that of Seaford, 1st February 1781, where the fourteen days expired during a recess of sented on the first day of the parliament, and Mr. Molesworth had neglected to present his petition on the day on which the house met after the adjournment, he offered to present it on the day after its meeting, alleging that it had been intended that it should be presented together with the petition of certain electors in his interest, which latter had been hindered from being presented by an unforeseen and inevitable accident (a), occasioned by an

> (a) Mr. Molesworth's petition stated (inter alia) that he had prepared a petition which was ready to be presented on the first day of the meeting of the house after the late recess: that sundry electors had prepared and signed a petition similar in matter of complaint with that of the petitioner, which would have been presented but for the casualty thereinafter mentioned; that the agent for the petitioner as well as the complaining electors lived at Lewes, ten miles from Seaford: that he being in London sent

down a petition on Saturday 20th January, to his clerk at Lewes, with directions to him to go early on the Monday morning to Seaford and get it signed, and to send it back to him in London by a messenger on the Monday evening or early on the *Tuesday* morning; that the said clerk went to *Seaford* on the said Monday morning and got it signed, and then went on 8 miles further to Eastbourne, thinking to have been at Lewes about four in the afternoon, but that such a snow as had not been known in

extraordinary severity of the weather, the circumstances of which were particularly set forth; Petitions of the house refused to receive the petition.

Sect. 2. 1st and 2d class.

It occasionally happens, that the house is not sitting either at all during the time limited sitting at the for presenting petitions, or not up to the end of the fourteen In either of these cases, however, that time. the petition may be presented on the first sitting day after the expiration of the fortnight. This has been allowed of in several instances.

Cases where the house is not expiration of

Northampton, 24th March, 1662.—The peti- 8 Journ. 394. tion was not delivered in within the limited a petition not

the memory of man came on, which not only covered the earth in the space of an hour to a depth that would have rendered it almost impossible to travel, but so filled the hemisphere as to render it altogether impossible to do so; for that it so thickened the air, that a man sitting on horseback could not discern his horse's head. and therefore he could not get back to Lewes that night, but remained at Eastbourne; and the next morning as soon as it was light set out with a guide, and after being buried with his horse many times in the snow, and at the most imminent hazard of his life,

reached Lewes, but not till

eight in the evening, though the distance was only 18 miles; committee, that through this delay and was permitted that which was further occasioned by the difficulty of travelling through the snow from Lewes to London, the petition did not reach London till the Wednesday night after the house was risen; that the petition was mentioned in the house on the Thursday, and would have been presented that day, had not the speaker said he apprehended it would be contrary to the rules of the house to receive it, but that he would take the sense of the house upon it, if desired by the petitioner. 38 Journ. 163.

Formerly delivered in proper time, by reason of the adjournment of to be received meeting.

Sect. 2.

Petitions of lst and 2d class.

It seems, it should be stated to the house that the petition was delayed only by the adjournment of the house.

In such cases an entry has also been usually made, that "the house had been informed, that the petitioners would have petitioned within a fortnight if it had not been for the adjournment of the house," or to the like effect. Hence it seems proper that such a statement should be made to the house.

In cases of amended returns, the same time usually allowed for petitioning as upon original returns.

In cases where the return is amended by the substitution of the name of a person, whom a committee decide to have been intitled to the return, it is usually ordered by the house, that all persons claiming to have a right of voting at elections for the place in question shall be at liberty to petition the house touching the election within fourteen days next, if they think fit; as in the cases of *Morpeth*, 27th Jan., 9th Feb., 31st Oct., and 23d Nov., 1775. *Bedfordshire*, 2d July, 1784 (a), and *Canterbury*, 12th May, 1797.

1 Doug. 153. 35 Journ. 84. 1 Lud. 398. 52 Journ. 571, et passim.

Or, that the party whose name has been erased out of the return, and the electors, shall have the like liberty to petition the house, in order to question the election of the person whose name has been so inserted in the return; 60 Journ. 121, as in the case of Middlesex, 6th March, 1805.

60 Journ. 121 et passim.

(a) The question in these cases related solely to the return.

So, where a name is amended in a return, there having been a mistake in it, the house Petitions of will give the electors the same time to petition class. against the election and return, 17th Dec. 1790. 46 Journ. 126. _Newton, 26th May, 1802 (a).

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3. With respect to petitions of the thrd \blacktriangleleft class (b).

The stat. 28 Geo. 3. c. 52. § 2. (c) directs that As to petitions if at any time, before the day appointed for of 3d class. taking any such petition into consideration, the speaker shall be informed, by a certificate in writing, subscribed by two members of the house of commons, of the death of a person petitioned against (whether returned singly or upon a double return), or that such person is summoned to parliament as a peer of Great Britain; or, if the house shall have resolved that his seat is by law become vacant; or, if the house shall be informed by a declaration in writing, subscribed by such member, and delivered in at the table of the house, that it is not the intention of such member to defend his election or return; notice Speaker being is in every such case to be immediately sent by to give notice to returning the speaker to the sheriff, or other returning officer.

(a) See the case of Sutherland, 15th December, 1790. 46 Journ. 87, post, Sect. 10. Lanarkshire, 17th December, 1790. 46 Journ. 126, et post, Sect. 10. Tralee, post, Sect.

(b) For this class, see ante.

(c) For this stat. see ante,

Sect. 2.
Petitions of

3d class.

officer of the place, to which such petition shall relate, and he is thereupon to cause a true copy of the same to be affixed on the doors of the county-hall or town-hall, or of the parish church nearest the place where such election has usually been holden.

And to have notice inserted in one of the two next London Gazettes. The same clause directed that such notice should also be inserted in the next London Gazette, but the stat. 53 Geo. 3. c. 71. § 17. (a) after reciting that such direction cannot in many cases be complied with, enacts that in all cases where any such notice is directed to be published in the next London Gazette, it shall be sufficient if it is published in one of the two next London Gazettes.

Petition to be presented within thirty days after such notice gazetted; And by the stat. 28 Geo. 3. c. 52. § 3. (b) (together with the latter act as far as the provision last-mentioned) such petition may be presented at any time within thirty days after the day on which such notice shall have been so inserted.

Quære, Whether where the house does not sit within the thirty days, the petition can be received at all?

The time for presenting a petition in this class of cases, being limited, not by an order of the house, but by an act of parliament, it should seem that there is no discretion in the house as to receiving a petition after the expiration of

⁽a) For this stat. see ante, (b) For this stat. see ante, 62.

that time; and it is very doubtful whether it could be deemed sufficient, by a liberal con- Petitions of 3d class. struction of the statute, that if the house should not sit within the thirty days, the petition should be left with the proper officer of the house (a).

With respect to petitions of the fourth <class (b):

The time for presenting such petitions was Petitions of limited by the stat. 28 Geo. 3. c. 52. § 26. (c) to to be presented twelve calendar months, or fourteen days after months after the commencement of the next session after that the house, auto in which the determination as to the right had right of election or of apbeen reported to the house; but the stat. 53 Geo. pointing returning officer 3. c. 71. (d) after reciting that the allowing so much time had been found to be inconvenient and unnecessary, restricts the time to six months (e) next after the day on which such report shall have been made to the house.

the 4th class, within six the report to or officers.

- (a) The cases where a petition has been received after the proper time is expired (anter 91, et seq.) afford an inference that a petition can only be presented within the meaning of the standing order, (App. DCXIV.) while the house is sitting, otherwise there can be no necessity for making any statement to the house upon presenting it.
 - (b) For this class, see ante,

- (c) For this stat. see ante,
- (d) For this stat. see ante,
- (e) The latter act does not specify whether the six months are to be lunar or calendar months. Possibly this may admit of some question, though the safer way for the moving party would be to consider them as lunar.

The general rule is, that where the word month is used

Sect. 2. Petitions of 4th class. If six months end while there is no parliament, or during prorogation or adjournment for fourteen days. then within fourteen days after nevt session or meeting of the house.

And by the same clause, if such six mor shall end, between the time when a parlian shall be dissolved, and the meeting of the 1 parliament; or during any recess by prore tion of parliament, or by adjournment of house of commons for fourteen days interver between the day of adjournment, and the to which the house shall be adjourned, 1 within fourteen days after the first day of next parliament, or of the next session, o the next meeting of the house (a).

in a statute, without the addition of calendar, or any other words to shew that the legislature intended calendar. it is understood to mean a lunar month. Lacon v. Hooper. 6 T. R. 224.

In case a doubt can be raised from the word month being used in the two statutes in pari materia, and their being therefore to be taken together, it may be of use to advert to the rule in the following case of Lang v. Gale, H. T. 53 Geo. 3. viz.

The word "month," may mean lunar or calendar month, according to the intention of the contracting parties: therefore, where upon a sale of land on the 24th of January, it was agreed by the conditions of sale, that an abstract of the title should be delivered to the purchaser within a fortnight from the date thereof, to be returned by him at the of two months from the date, and that a draft c conveyance should be livered within three m from the said date, to l delivered within four m from said date, and the chase to be completed c 24th of June, making riod of precisely five cal months from the date sale and conditions, the months was held to mea lendar and not lunar me by reference to the period fixed for the co tion of the contract. 1 N and Selwyn, 111.

(a) One case seems 1 be provided for by thi tute, that of the six m expiring during an adj ment for less than fou days. This would be logous to the case to upon in p. 96, as to pet

of the 3d class.

And by the stat. 28 Geo. 3. c. 52. § 27. (a) if no such petition shall be presented within the Petitions of limited time, the judgment of the select committee on any such question is to be final and conclusive in all subsequent elections.

Where the right of election is once reported upon, the time of limitation begins to run immediately, and it matters not that there is a subsequent report by another select committee upon such right.

Malmsbury, 24th April, and 27th June, 1798. 52 Journ. 102. A select committee had made a report of the 1 Peck. xxviii. right of election on the 27th November, 1796, If right of and another select committee having been appointed in 1797, to try the merits of a new election, also made a report upon the right of from such election, on the 10th of May, in that year.—On the 24th of April, 1798, a petition was presented that the right against the right reported by the committee in 1797, which was ordered to be taken into consideration on the 11th of June; but on the 7th of June, the following resolution was made: "That (it appearing to this house that no petition having been presented to the house by any person or persons, praying to be admitted as a party or parties to oppose the right of election,

53 Journ 659. 2 Peck. 397. election, &c. be once reported upon, the time of appeal begins to run report; nor can it make was again reported upon within the period of appeal.

⁽a) For this stat. see ante, 36.

Petitions of 4th class.

as determined by the select committee, and reported to the house upon the 27th day of November, in the last session of parliament, within the time limited by the act; and the judgment of the said committee, as to the said right of election, having thereupon become final and conclusive to all intents and purposes whatsoever) the said order for taking the said petition of the several persons, whose names are thereunto subscribed, on behalf of themselves and others, burgesses of the borough of *Malms-bury*, in the county of *Wilts*, into consideration on Monday next, be discharged."

5. With respect to petitions of the fifth class (a):

Petitions of the 5th class may be presented at any time before day of taking petition opposing right into censideration.

The stat. 28 Geo. 3. c. 52. § 29. (b) allows a petition praying to be admitted party or parties to defend the right determined and reported upon by a select committee, to be presented at any time before the day appointed for taking the petition in opposition to such right into consideration.

(a) For this class, see ante, (b) For this stat, see ante, 36.

SECTION 3. Who may be petitioners in election petitions (a).

WITH respect to petitions of the first class (b):

Every petition complaining of an undue elec- Petitions of tion or return must be subscribed by some person or persons claiming therein to have had a right must claim as to vote at the election to which the same relates: tor, or as have Or, by some person or persons claiming to have to be returned had a right to be returned as duly elected, or been a canalledging himself or themselves to have been a candidate or candidates at such election: And by the stat. 28 Geo. 3. c. 52. § 1. (c) no such

the lat class. Petitioner being an elecing had a righ or as having didate.

(a) It is always prudent in the case of a petition by a candidate, to have also a petition from electors, in case of any technical difficulty arising as to the one which perhaps may not apply to the other.

It is proper here to mention, that one consideration, which it has been important to attend to in petitions of electors, has ceased to be material. Doubts had existed as to the authority of select committees to examine persons who had subscribed the petition as witnesses touching the matters therein, and indeed in the case of Ilchester, (3 Doug. 165.) the inadmissibility of such a witness is

spoken of as agreed upon on all hands. These doubts are now removed by the stat. 53 Geo. 3. c. 71. § 19. (ante, 62, n.) and it is declared thereby that any person may be examined, although he shall have subscribed the petition, except it shall otherwise appear that he is an interested witness. This provision is general as to peti-tions of all classes. The mere circumstance therefore of being a petitioner is of itself no objection to the competency of a witness.

(b) For this class, see ante,

(c) For this stat. see ante,

petition is to be proceeded upon, unless it be so subscribed (a).

Petitions of 2d class.

2. With respect to petitions of the second class (b):

Petitioner must elaim in like manner. Such petitions must, in conformity to the statutes 25 Geo. 3. c. 84. § 10. (c) and 28 Geo. 3. c. 52. § 1. (d) be subscribed in like manner.

Petitions of 3d class. 3. With respect to petitions of the *third* class (e):

Petitioner must claim as an elector. Under the stat. 28 Geo. 3. c. 52. § 3. (f) any person or persons petitioning to be admitted party or parties in such cases, must claim to have had a right to vote at the election.

Petitions of 4th and 5th class. 4 and 5. With respect to petitions of the fourth and fifth classes (g):

It is competent to any person to petition. It is competent to any person or persons, coming in within the proper time, to petition the house to be admitted party or parties to oppose or to defend a right of election, or of ap-

(a) As to petitions in cases of elections for Scots burghs, see post, Sect. 10.

(b) For this class, see ante, 83.

(c) For this stat. see ante, 20.

(d) For this stat. see ante, 22.
(e) For this class, see ante, 83.

(f) For this stat. see ante, 24.

(g) For these classes, see ante, 84.

pointing a returning officer or officers, determined and reported upon, under the stat. 28 Petitions of Geo. 3. c. 52. § 26, and 29 (a); the effects of class. decisions in these cases being of such importance that the law leaves it open to any persons, who may be able to adduce evidence upon the subject, to come forward and do so.

The objections which may be made to peti- Petitions in tioners, will be considered in the two following general. sections: Suffice it here to observe, that in whatever character a person may petition, he must be prepared, as a first step, to prove himself intitled to it, and without so doing he cannot proceed. And that upon the same principle, if electors petition in favour of a candidate, they must, in the outset, shew him to have been such.

This was holden in the instance of a candi- 1 Peck. 490. date in the case of Newcastle-under-Lyne, 1803, must prove that they have where the petitioners, having put in and proved the character the return, were proceeding to give other evi- petition. dence of the facts stated in the petitions, when the counsel for the sitting members objected that it was necessary that the poll should be first produced and given in evidence; for that Mr. Becket petitioned as a candidate, and it was requisite he should prove it, and that the poll was the only evidence to shew who were candidates.

in which they

(a) For this stat. see ante, 35, 36.

Sect. 3.

This was contended on the other side not to be necessary in any (a) particular stage of the cause: And it was insisted that there being also a petition of electors, that might be proceeded upon.

Electors petitioning in fayour of a caudidate must, in the first instance, shew him to have been such.

But the committee determined that the production of the poll was necessary before any further proceeding (b).

(a) This strictness seems to be of later years.-In the case of Stafford, 27th Nov. 1722, the committee first heard evidence and decided upon the right of election: The petitioners then proposed to shew that they had a majority, and offered a copy of the poll in evidence, which the committee was of opinion was not sufficiently proved; and the petitioners gave up the contest. 20 Journ. 64. and 1 Peck. 491, (n.) This was considered not to be necessary in a case where two polls were taken by persons whore spectively contended for the right to make the return. Fowey, 1791. 1 Peck. 518.

(b) Upon this determination being communicated to the parties, an application was made on the part of the petitioners for an adjournment of two days, for the purpose of obtaining the poll; but the committee resolved not to adjourn. And the case was closed thereupon. 1 Peck.

There have been many cases as to the authenticity of

poll-books. Buckinghamshire, 12th of March, 1727.—The clerk of the peace being called as a witness, produced eighteen paper books, which he said were delivered to him by the undersheriff as the poll-books taken at the election, that they were taken at different places, some by the sheriff's agents, and others by the agents for the candidates, but he could not distinguish or say which of them made the sheriff's poll, and none of the said books being either sworn to by the sheriff or attested by him, the committee did not think they had sufficient evidence to proceed upon; and resolved that the sitting member was duly elected; and the house negatived a motion to recommit their resolutions. 21 Journ. 80.

This rule was afterwards recognized in the cases of Waterford, 1803 (a), and Dungarvon, App. cccexxxvii. 1808; though in the former of these an indulgence of further time for the production of the poll was granted under particular circumstances (b).

Yorkshire, 24th February, 1735. It was objected against the production of the pollbooks, by the deputy clerk of the peace, that the same had not been delivered over upon oath, and not within the time limited by law, and no proof having been given that no alterations had been made therein after the election and before the delivery: reference was made to the statute of Anne, and to the case of Bucks just mentioned, and the deputy clerk of the peace being further examined, it was resolved, "that books called the original pollbooks of the last election, &c. produced by R. A. deputy clerk of the peace for the East Riding of the said county, and which were delivered over to him by the high sheriff of the said county in open court, at the quarter sessions of the peace for the said riding, about two months after the said election, as the original poll books, taken at the said election, and which have been kept by him the said clerk of the peace ever since among the records of the sessions of the peace for

the said riding, the said books not being delivered by the said sheriff within the time, nor upon oath as required by the act, (&c.) be admitted in evidence." 22 Journ. 587. 2 Peck. 270, (n.)

(a) See post, Sect. 11.

(b) In the case of Herefordshire, 1803; it was questioned whether the poll-books, which had not been delivered to the clerk of the peace according to the statute, could be produced in evidence by the witness who was called, such witness being his clerk by whom they had been brought to London. committee declared that they did not take upon themselves to decide in whom the legal possession of the books was, but that they would receive them from the person who had the actual possession of them; and they ordered that the under-sheriff, or the person in the actual possession of the poll-books, should produce them. 1 Peck.

As to a question where there are more poll-books than one. See R. v. Davis, 1 vol. 716, Sect. 4.

SECTION 4. Of objections to petitioners in election petitions appearing upon the face of the petitions.

Petitions of 1st, 2d, and 3d class.

THE subject matter of this section is applicable only with regard to petitions of the *first*, second, and third classes (a); and it is to be taken as applying equally to each of those classes.

It is material to observe, that questions of the nature of those embraced in this and the following section are usually raised as preliminary ones, before the general merits of a petition are entered upon; and the propriety of this course is fully sanctioned by the case of Sandwich, 1808, where the order of proceeding was made the subject of particular discussion.

Post, 128. (n.)

It ought to appear on the face of a petition that the petitioners are of the description required.

It ought to appear upon the face of the petition, that the party or parties subscribing it come within one or other of the descriptions required by law. It has not, however, been exacted, that there should be any strict technical allegation to that effect; it has been considered sufficient, if the petition, according to the common acceptation of its language, purports to be from the proper person or persons.

(a) For these classes, see anic, 82, 83.

Objections, however, have been frequently raised upon this head.

Petitions of 1st, 2d, and 3d

In the Caermarthenshire case, 1803, Mr. 1 Peck. 286. Mansell Philips, a petitioner, described himself Petition signed in his petition " as a freeholder of the county by a petitioner as a freeholder of Caermarthen;" a preliminary objection was without any taken before the select committee to his going gation as to his having had a into evidence of the matters contained in his right to vote, petition, upon the ground that he had not de- ficient. scribed himself therein to be one of the persons permitted by the statute to present a petition, viz. as " claiming therein to have had a right to vote at the election to which the same related" (a). The question was argued; and the committee resolved, "that the petitioner should proceed."

of the county, holden suf-S. C. post, 111.

Middlesex, 2d February, 1804.—A petition 1 Peck. 294. had been presented, 7th December, 1802. and renewed 23d November, 1803, by certain persons calling themselves "freeholders of the county of

(a) An objection of the same nature was made before the statute, in the case of Buckingham, 22d January, 1688, and 16th April, 1689, viz. that the petitioners had not alledged that they were either electors, or elected, or candidates; but it seems to have been disallowed, as

the consideration of another point was proceeded upon. 10 Journ. 12, 80.

In the above case of Caermarthenshire, it was urged in argument that the above objection ought to have been made when the petition was presented to the house. 1 Peck. 200.

Petitions of 1st, 2d, and 3d

M." complaining of the election of Sir Francis Burdett, and praying the house to take their case into consideration, and to grant to them such relief in the premises as to the house should seem meet. Upon a similar preliminary objection made in the house, it was much debated, whether the petitioners should not have more distinctly "claimed to have had a right to vote." It was said, on the one hand, that the right to vote did not appear from their statement; they might be freeholders, and yet be minors, or women, or their freeholds might be under forty shillings a year. On the other hand, the weight of precedents was in favour of the petitioners, and it was said, that though it was required of petitioners to state their interest, it was sufficient if this were done in such terms as fell within the common understanding of mankind; that no technical phrases or particular forms of words were necessary. That it was apparent that the petitioners meant to claim to be legal electors. That after having received so many petitions in the same form (a), it would be hard to reject a renewed petition, two months after it had been received, and the day before it was to be taken into consideration, (such being the

⁽a) See the petitions, Ster- Zetland, 8th December, 1790. ling, 1st December, 1790. 46 Journ. 42.—Radnorshire, 46 Journ. 15 .- Orkney and 14th Dec. 1790. 46 Journ. 59.

time of the debate.)—The petition was holden sufficient, the house negativing the motion for Petitions of discharging the order for taking it into con-class. deration, 96 to 24 (a).

1st, 2d, and 3d

Boston, 1803.—The petition was described as 1 Peck. 434. of certain persons, "having a right to vote at by persons the election of burgesses to serve in parliament have had a for the borough of Boston." A preliminary ob- right to vote at "the" jection was made, that the words of the peti- election without saying the tion did not comply with the statute; the pe- was holden titioners only claiming to have had a right to vote at the election, without saying the last election. It was argued, that such right might have accrued since the election: That they might have been disqualified at the time of the election, but not at the time of the petition. After argument, the committee decided that the petitioner should proceed.

claiming to ' last' election,

(a) It seems more prudent to adopt some of the terms which explicitly describe the petitioners as within the statute, as in the cases of Taunton, 1st Dec. 1790.— Electors of the said borough at the last election." 46 Journ. 16. In the *Dorchester* petition the electors stated, that the returning officer rejected the votes of the petitioners, "who had an undoubted right to tion." 52 Journ. 150.

vote." 3d December, 1700. 46 Journ. 27. Downton, 14th December, 1790 "That the petitioners did tender their votes." lb. 59. Fowey, 14th December, 1790. "Being persons who had a right to vote at the last election."-Ib. 61. Flintshire, 5th Dec. 1796. "Freeholders of the county, and who were intitled to vote at the last elecSect. 5.

Petitions of 1st, 2d, and 3d SECTION 5. Of objections to petitioners in election peticlass.

tions, not appearing upon the face of the petitions.

of the preceding, is applicable in cases of petitions of the first, second, and generally, though not always, of the third classes (a); but from its nature, it cannot well become material in any other cases. There are objections other than those which appear upon the face of an election petition, which may equally operate as impediments to its being entertained; and these may also be put forward against petitioners (b), as preliminary points.

(a) For these classes, see ante, 82, 83.

It has been seen that it is not necessary to intitle a person to present a petition either of the fourth or fifth classes, that he should be clothed with any particular character; but in the event of a person becoming a petitioner in such cases, who is under a disability to sue in the courts of law, (e. g. an alien enemy,) it should seem doubtful whether a petition from such a person ought to be entertained.

It might also be questionable, whether a person who from his religion will not take the oaths required of electors, and therefore,

though otherwise qualified, cannot vote, can become a petitioner.

(b) It is scarcely necessary to mention that there can be no objection to a person's becoming a petitioner, either as a candidate or an elector, in different petitions at the same time.

A person elected and returned for one place may petition upon a claim to a seat at another, nor will he be called upon to make his election as to his seat till such petition is disposed of.

A person petitioning in respect of an election at one place may become a candidate for another. On the 16th April, 1728, it was re-

The objections alluded to are: 1. That there have been undue practices in bringing forward Petitions of the petition. 2. That a petitioner has not, in class. reality, the character which he assumes in subscribing the petition. 3. That a petitioner has precluded himself by some act of his own, from complaining of the matters of the petition. 4. That a petitioner, petitioning as having been a candidate, is ineligible or disqualified, or that he has not a qualification to enable him to sit in parliament. 5. That a petitioner, petitioning as an elector, is disqualified to vote.

It is to be observed that a petitioner in any case, by becoming such, renders his whole conduct with regard to the election amenable to inquiry, in order to the discovery of objections, which would defeat the petition; and in the case of a candidate, with the further view also of shewing him to be incapacitated in the event of a re-election.

Caermarthenshire, 1803. The petition of Mr. 1 Peck. 287. Philipps (which was a case of an elector's peti- S. C. ante, 107. tion), charged both Mr. Williams the sitting member, and Mr. Paxton the petitioning can-

solved, "That a person pe- elected and returned for antitioning and thereby claim-ing a seat in this house for tition." 21 Journ. 136. one place, is capable of being

Sect. 5.
Petitions of
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class.

didate with bribery and treating, and the committee intimated that they desired he might proceed as well against Mr. Paxton as against Mr.

Williams to the war law he promoball

1 Peck. 99. 2 Peck. 188. 193. Ante, I vol. 149, 150. In the cases of Coventry, 1803 and New Windsor, 1804, which were cases of petitions by candidates the legality of such inquiry was much disputed, but after full argument it was established. And it has been already explained upon the authority of the two latter cases, that this inquiry may be proceeded in notwithstanding that a petitioning candidate should have abandoned his claim.

As to the objection that there have been undue practices in bringing forward the petition:

Undue practices as to petitions to be inquired into in the first instance. If there he a ground for suspecting that there have been any such practices; as that the signatures thereto are not authentic, or that they have been procured by improper means, or that there has been fraud or improper contrivance in setting on foot the petition, that fact will be inquired into in the first instance.

This has been done in respect not puly of election petitions, but of those which regarded

other subjects; and the house has, in many instances, rejected petitions upon such grounds.

Petitions of 1st, 2d, and 3d

Haslemere, 3d and 4th March, 1713.—Mr. 17 Journ. 481. Oglethorpe petitioned against the election and 3 Lud 188. return, and the house being informed that he did not sign the petition, went into evidence upon the question, and it not appearing to have been signed by him, it was rejected.

Wigan, 3d and 12th March, and 6th April, 17 Journ. 481. 1714 (a). The Earl of Barrymore petitioned Petition not against the election and return.—Upon similar tioner himself, information to the house to that in the preceding case, the committee were instructed, that before they should proceed in the said petition, they should examine the manner of signing the same. It appeared, that the petition was not signed by the Earl, but only by his order, and that he owned it. The committee were discharged from proceeding, and a motion that the Earl should be at liberty to prefer a new petition, signed by himself, and containing the same allegations as in the former petition, and no other, was negatived.

signed by petirejected.

(a) See the cases of Stirling. &c. 5th and 9th March, 1st and 6th May, 1714, and of

Dumbarton, &c. 4th Feb. 1742, post, sect. 10.

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Sect. 5. Petitions of 1,st, 2d, and 3d class. 24 Journ. 343. Preliminary inquiry as to signatures.

Wootton Bassett, 2d Dec. 1742, a petition complaining of an undue election and return -Upon similar information to the house, they gave the like instruction to the committee of privileges and elections, a have not took not no griffe-

32 Journ. 85. Same point. n. (a.)

byter git for me will be beginning top sook flight Pool, 2d December, 1768, a petition com-S. C. post, 121, plaining of an undue election and return.—The house being informed that (amongst other objections) there was reason to suspect that some undue practices had been used to induce some persons to subscribe the petition, the committee of privileges and elections were instructed by the house to examine into the manner of pro-curing and signing the petition of the several persons whose names were thereunto subscribed being electors, before they should examine the matter of the petition.

10 Journ. 285. Petitions to be signed on and marked by potitioners themselves. mporg

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79 And the house has, in the course of its in-Wuities, as to petitions relating to other matters, resolved, "That all petitions presented to the Wouse Sught to be signed by the petitioners with their own hands, by their names or marks (a)!" And also, "That it is highly unwarrantable! and

34 Journ 800. The putting another's name to a petition is a breach of privilege.

a breach of privilege of the house, for any person (u) 14th November, 1780. This resolution pasted upon its appearing that a petition With respect to the silk mado in the care

nufacture had been signed by a scrivener in the names of persons who deputed him so to do. others) with and the a lors of of وأخوا الوارية ودار

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to set the name of any other person to any petition to be presented to the house (a). A min in routh marro boult, or an error or or

Petitions of lst, 2d, and 8d

"If there has been fraud (b) or collusion in setting on foot the petition, and a colour given it which does not properly belong to it, the whole will be vitiated, and it will not be heard.

1st. Canterbury, 1796. - Mr. Baker and Mr. clifford, 353. Sawbridge were returned, but their election was more against the ground of bribery and treating, entire many and treating, entire many and treating.

2d. Canterbury, 1797.—Mr. Baker and Mr. Sawbridge were again returned. A petition was presented, signed by John Callaway and A petition, thirty-six electors, against their return, upon the charged the ground that they had been guilty of bribery, treating, and corrupt practices, at the election which was avoided; and that therefore they could not be elected to represent this city in parliament on the renewed election; and insistings, that, although they, had, the majority of wotes, Mr. Gipps and Sir Jahr. Honeywood cought to have been resurned. The large back

Clifford, 357. S. C. 1 vol. 147, et post. candidatesin whose favour a petition was pending (as well as the sitting members) with bribery, &c. was rejected, upon the ground of connivance between the petitioners and the sitting members.

(a) 2d June 1774. This re- amine the signatures of a pesolution passed upon the occasion of a petition having been subscribed in the names of certain persons (amongst others) without their authority. 19th Feb. 1795. It was referred to a committee to ex-

tition from Carlisle, praying for peace. "50 Journ. 238.

(b) See a question as to maintenance a relieved petition. affil as to whether partial fraud can affect the whole petition. Honiton. 3 Lud. 145. Post, 167.

i

Sect. 5. itions of , 2d, and 3d There was also another petition, signed by one Bunyer, and a few other electors, stating that Mr. Gipps and Sir John Honeywood, as well as Mr. Baker and Mr. Sawbridge, were disabled and incapacitated to serve in parliament, by reason of bribery and treating, of which they had all been guilty at the former election.

i. 361.

Upon the trial before the select committee the counsel for the petitioners Callaway and others objected to the petition of Bunyer and others, as being contrary to the act of parliament (a), and founded in fraud, and offered to call evidence to prove it. After argument, the committee resolved, "that evidence to prove the fraud alleged was admissible. other sitting un auto-It was admitted that the petitioners Bunyer and others had voted for the late, sitting, themhere at the first, but that they had not noted at all at the last election. It was proved that their petition was not intended to be prosecuted theversely against Mr. Baker and Mr. Sawbridges that it had been presented at their desire, and was prosecuted at their expense; that though these petitioners had not voted at the last elegtion, yet, that during the course of it the string members had been seen at the house of Bunyen, that he had can vassed for them, and that some of the voters in their interest had been treated

in his house. It was also admitted, that the Bent h. agent of these petitioners before this committee, Pennan of attended the former committee, at the request and of, and as an assistant to the agent of the sitting members. After argument, the committee resolved, " was the frank and yet against the petitioners Jes: Enger and where, 140 men proved."-Anti-native メンソウンバックリク De beard."

biii. Infin the case of Herry to their, 800, we of the same objections made to the processor of the processor that the as electors against the George Comments and that the region is a series of the series of the to try the ment of the service of the property the personal form of the second DON'T IT SECTION IS THE PROPERTY OF THE 機能能 きまきする Cope on 1 of Comment BOOK - THE STATE OF STATE OF STATE

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Petitions of 1st, 2d, and 3d class. There was also another petition, signed by one Bunyer, and a few other electors, stating that Mr. Gipps and Sir John Honeywood, as well as Mr. Baker and Mr. Sawbridge, were disabled and incapacitated to serve in parliament, by reason of bribery and treating, of which they had all been guilty at the former election.

Ibid. 361.

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in his house. It was also admitted, that the agent of these petitioners before this committee, Paintons of attended the former committee, at the request class. of, and as an assistant to the agent of the sitting members, After argument, the committee resolved, "that the fraud alleged against the petitioners John Bunyer and others, had been proved."-And " that the said petition should not Behrands, tooks out amountain out Auril bus the state of the state of the semile that the semile semile. objections made to the petitioners who petitioned Same point.
as electors against Sir George Cornewall, was that the object of the petition was not bond fide to try the ments of his closest a possible state. to try the merits of his election, but to deter the petitioners against Colonel Cotterell, the other sitting member (against whom another -tody To electricity and positioned of viscosity of the contractions of the contraction o ceeding with the triality their suit band there was Some levidence from whenter this might berich Terred fall. b. The petitioners were not me raditted (a) It was proved, that the that in consequence thereof presented against Colonel the petition against him. It humbers of the freeholders of who drew the petition that Herefordshire; that the petition such was the occasion, and thoners against Sir George the principle, alpha which it Grandly who had voted for had been presented. A letter him, and four of whom had also was produced from him mand tour of whom had also was produced from him the company of them to 54, each) were heard, agent, offering to abandon to declare, that if Coloner the petition, if that against Gottore dead chambitted still colored Hotters by entitlefault, Sir George Cornewall wise given up. 1 Peck. 211, had done so likewise; and a control of

Sect. 5.
Petitions of
1st, 2d, and 3d
class.

to proceed with their petition. But as there were other very important objections, it cannot be said how far this may have weighed in the decision.

1 Peck. 434, 435. S.C. ante, 109. and post, 119. Semble. Petition en-. tertained, notwithstanding declarations of petitioner, that he had no interest in the success of the petition, that he did not believe the charge in it, and that his dependence on the other candidate induced him to sign it.

Boston, 18031—It was attempted as a preliminary objection to one petitioner, (all the others being objected to upon another ground); that he had no interest in the success of the petition, that he did not believe the sitting member to have been guilty of any bribery (that being the charge against him); and that his dependence upon the other candidate rendered it necessary for him to subscribe the petition. This was said to shew fraid and malifies. But the committee versolved, "that the petitioners should proceed they

2. As to the objection that a petitioner has not, in reality, the character which he assumes in subscribing the petition:

with respect to petitions of the first, second, and third classes (a):

However sufficient the petition may be upon the face of it (b) it is competent to the opposing

⁽a) For these classes, see the allegations in this particular, 82, 83.

(b) As to the sufficiency of

party to go into avidence to shaw that a petition is not within the description, contemplated Pethions of by the statute and the objection, if established dam. will be decisive, as far as regards such petitioner,

Thus, in the above case of Herefordshire, 1803, 1 Peck. 210. it was proposed by the counsel, for the sitting may be gone members to prove that a Mr. Morse, who had that petitioner signed the petition, was no freeholders and there therefore, had mo right to petition . This was if prevely objected to on the other side but upon deliberan fatalisation tions the committee resolved, "That the counsel and positions might call witnesses to prove that Marta was mo: freeholder.": And having heard evidence (4) they resolved, "that Morse was no fresholder, and that his name should be struck ontroff, that solved, "that the or titioners stout" problemitisq

Evidence into to shew is not an elec-The objection, S. Ciante, 117. egocous . petition, log bib o 91'1 4' ti ui 92 eid 'sı' deace on er can-

Boston, 1803.—An objection was made to all 1 Peck. 435. the petitioners, but one, that they were not legal Same point electors, by reason that they were non-resident, which it was said was requisite in that borough. The nature of the objection seems not to have been disputed, but there was another subscriber to the petition to whom it did not apply.

11 (a) A notice was proved to determined. 4 that We! hot hane- beng served on Moretan bevisa i produced othe cheest to produce his lease; and a after notice, his declaration copy of the lease signed and (i. e. acknowledgment of the allowed to be such was offered copy) should be received in in evidence; this was ob- evidence," 1 Peck. 210. jected to, but the committee .

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Petitions, of 1-9 181, 642 and 3di class. sent

5 Joorn. 131. Same paint.

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A person who has concurred in the return, by becoming party to it; or who has contributed to bring it about, by giving his vote for the party returned, cannot afterwards dispute its validity; as regarding such party. So far, therefore, the ideas perform becoming a petitioner, a bring and a norm becoming a petitioner, a bring and all in norm becoming in a return terminal afterwards dispute it, appears from the language of the resolution on the following case (although there swas another ground of ineapacity and the petitioner) and from the decision in a return the language petitioner) and from the decision in a return the language petitioner) and from the decision in a return the language petitioner) and from the decision in a return the language petitioner) and from the decision in a return the language petitioner, and the petitioner, and a return the language petitioner.

Herefords is a seril - 1808 production of the pro-

9 Jonnie na 9 Jonnie 107a: 8. Get vole 100: andreat 103: A person who has joined in a return, cannot petition against it.

Page 2

Dittimford, 27th March, 1677.—The petition of Mr. Hatcher, high sheriff for the county of Lincoln, being exhibited to the committee of privileges, and elections, setting forth that he was duly elected for the said borough; his proposition was persons and learning was persons and learning was persons as the last of the house.

180, and does not seem to the house on the seem to the house on the denied on the said of the said on the said of the said on the said of the said

all cobluit 18th Junet 1751 Specific uestion was negatived, that S. Guand J. Marhaving highest Petitions of the indenture of returns by which Charles Coron class. wall, Esq., was returned, the house would pro- Same point. cased on the petition of the said Softward I.M. complaining of an undue election of which said C. C. (a).

151, 2d, and 3d 8 Journ. 181.

A person who has core arred in the return, by of Thougher ground of estoppel, manually that of asperson having given his vote for the party against whom he afterwards petitions by and logous, to the dast, and is perfectly consistent is principle therewith. This appears to the potent the ground which was chiefly insisted upon in the following case, in which the petition failed will account of objections to the petitioners; but usaffe decision was not narrowed to conclusion; such analogy, and gonaistency is very material /as corrapparting the proposition in tquestion (b) iting

Herefordshire, 1803.—There were eight pe- 1 Pock. 210. titioners, of whom seven voted for Six George Cornewall, the eighth was incompetent to petition against the against the property of the petition upon another ground (already stated). It is advection and return of a personnel of the petition of the peti

od (ability three cases of Proles would of the State of the 2d December, 1768, already Journ 81, 919913 viiib saw mentioned, it was (inter dia) (b) This proposition was spicered to ax out of eleven a memoral at a reducent by 356 persons, who had subscribed goungel for the aitting memoral at the second subscribed goungel for the aitting memoral at the second subscribed goungel for the second subscribed goungel goungel goungel goungel goungel goungel goungel goungel goung persons, who had subscribed gounsel for the sitting mem-a petition against the electrons, in the case of Humion, tion and return, that they 1786, and does not seem to had signed the return of the have been denied on the member against whom they other side. 3 Lud. 145.

s party for

Sect. 5. Petitions of 1st, 2d, and Sd class. whom be voted at the election. S. C. ante. 117. 119.

was proposed to argue, that such seven petitioners could not be heard before the court, to complain of the election of Sir G. C., because they had voted for him. It was objected to this. that the petitioners had no notice that this exception was about to be taken, and were not prepared to defend their right. ... It was determined, however, that "the counsel should be at liberty to proceed (a)." to pogest gi

respect of all place The point in question was thereupon (amongst others) fully discussed; after which the committee resolved, if that the counsel for the petitioners against Sir George Corenwall should not be permitted to proceed."

4. As to the objection, that a petitioner petitioning as having been candidate is ineligible or disqualified, or that he has not a qualification to enable him to sit in parliament: فهود الأرمال

This objection can only arise in pentions of the first and second classes (b).

It seems to be an established principles that: none but those who are capable of sitting as members of the house of commons can reffect

 $_{c}\sim M_{C}$ that $_{c}$ theorems to $_{c}$ (a) It is, to be collected ed to them so to do, if they from this resolution, that persons who petition as electors, instance. must come prepared to prove that they are such; and that ante, 82, 83. tor Although the was the language of file south rother on

ing evidence to one d are not prepared in the first (b) For these classes, see

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tually become petitioners in election petitions. in the character of candidates, masmuch as it Petitions of would be nugatory and idle, that a person should class. contend for a decision in his favor, the advantage of which he could not reap in the general result.

austral objection upon such ground may operate, as the hature of it may be, either partially in respect of a particular place, or generally in respect of all places, and may be insisted upon accordingly. Buch the state of the

In the case of Stamford, 27th March, 1677, --- 9 Journ. 407. In addition to the objection made to the pets person cannot tioner, which has been already mentioned, Man petition as a Hatcher, who petitioned as a candidate, but who has a disqualifying whose petition was rejected, had, as far as reoffice.
S. C. ante, 120, garded the election in question, a disqualifying and 1 vol. 109. office, and although that circumstance is not specifically adverted to, it probably was not unobserved by the house. The state of the mark

time from with Bedford, 16th April, 1728.—It was objected, 21 Journ. 138. that Mr. Ongley, who petitioned, was, by an same point office in the customs, disabled to sit or to claim decided. to sit in parliament. The committee, after hearn ing evidence, resolved, "that having an office, &c. he was incapable of claiming to sit in parliament for the said borough (a)." Whereuponmost come propared to keed

that they are such; and that their Rt he (a) Although this was the language of the mathlution, the incapacity was general.

Sect. 5.
Petitions of 1st and 2d class.

S Lud. 162,
'S. C. 1 vol.
143.
A person disqualified to be elected, if the election of the sitting member were

avoided, cannot petition as

a candidate.

his counsel admitted that the sitting manniers were duly elected, where were duly elected, where were a reast so not

Honiton, 1782. Mr. M. Leod, who had been returned at a former election, but whose election had been avoided for bribery, became a candidate at the election to supply the vacancy. Mr. Wilkinson was returned, and Mr. M'Leod peritioned against him. An objection was made on the part of the sitting member, to Mr. M'Leod's going into evidence in support of his petition, for that his former return having been no nonzero with the electron of the electron petition, to supply to notice the vacancy (a). After argument the committee the vacancy (a). resolved. that the sitting member might pro rd noticely and they afterwards resolved in M. Leod," and they afterwards resolved rendw Mr. thereupon proposed on then godga erew odw.estimmoo acts, which went to disqualify sider the former petition (describing it), mg declared the election of Alexander M Esq. void; (the said petition containing no othe allegations than of bribery and corrupt practices) it was the opinion of the then committee, bribery and corrupt practices only. And. "that the said Alexander M. Leod was not the vacancy occasioned by the said resolution (b)." deads of set like doing to

(a) For the case of a petitioning elector called and attention be disqualified by bribary, see post, 132.

(b) They likewise resolved "that the counsel for the

electors should proceed to prove the allegations of their patition of Mac Material nate being permitted to provenies allegations of his petition."

23 do na sight that the second of the second tion of this nature was made to the pretensions Petitions of of candidates, who did not themselves petition, class. but in whose favor electors petitioned, such objection being made by those who were parties before the select committee, as sitting members, but not till after the committee had declared that they were not duly elected; the committee would not then permit them to go into the ob-Ill Land's general in the second short the

need gargen a mass and \$1797. The election of ylqque of entry 1796 and 1797. The election of ylqque of entry and \$257. The ylqque of entry and \$257. The ylqque of entry and corrupt practices, and entry 115. Solve ylqque of the ylqque of oft seems, however, that nothing short of an absolute incapacity, the necessary consequence of which will be to disable, either in respect (a) For the case of a postion of when should proceed to ried) Upon ithis resolution; ents being no longer parties then counsel for the mitting touther shute interprise ide gigdrywethlikw asstaban

moitisa sid la anchancile baviosas salve III / s

Sects 5. Petitions of 1st and 9d class.

of a particular place; or in general, wilh be sufficient to substantiate an objection upon the grounds now under consideration. It is not sufficient to induce a select committee to reject a petition by a candidate, that there belongs to the petitioner, some circumstance whereupon it has been usual for the house. Witheir discretion, to forbid a member to remain amongthas been seed on them. Condition 2

1 Peck. 335. A person who had been convicted of a libel, struck off the roll of attornies, and had received judgment of the pillory, was nevertheless allowed to netition as a candidate.

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arm to

East Grinstead, 1803.—An objection was taken to the petitioning candidate's being heard before the committee, because he (Mr. Frost) had been convicted in the court of King's Bench of a libel against the government; had been struck from the roll of the attornies of that court; and had received judgment of the pillory: it was contended that the committee might and ought to enquire into this matter, and that if it appeared to be true, and that the petitioner, if duly elected, was from other circumstances unfit to sit in the house of commons, they should refuse to let him proceed. The conviction, sentence, and the identity of his person were established; but it appeared that the sentence had never been put in execution, and that his recognizance had been discharged. The committee determined, after the objection had been fully argued, "that the petitioner should proceed." granted states in sometiment in

ed Aswto. the objection that a petitioner, petitioning as having been accordidate, has not Petitions of Euqualification to enable him to sit in parlia-class. ment:

er on a sanishite, true then belongs -91 This objection can only arise in petitions of the first and second classes (a).

் 🎾 சாவை கழைந்த It has been already seen that the qualification Ante, 1 vol. 49. of a petitioner, or a person in whose favour 54,55. electors petition, may be inquired into.

It appears, however, from the following case, that the house will not enter at all upon the question of a petitioner's qualification, but will leave such enquiry entirely to the select committee.

11 July more of the pullory: 11

bugreau Grandby, 22d February, 1808.—The 63 Journ. 91. House Was moved that the resolution of the 21st Wovember, 1717, as to a sitting member ques (4nte, 1 vol. troning the qualification of a petitioner might be read " And a motion being made, and the The house question put, that the notice delivered to the will not enter clerk of the house, by the Hon. Charles Anderson petitioner's Petham, requiring John Henry Loft, Esq., the qualification, but will leave petitioner against the last election and return it to the select ifformed borough of G. G., to deliver in a partithiar of his qualification; if passed in the nega-, argued, " that the prediced should upp

(a) For these, see ante, 82, 83.

Petitions of lat and 9d class. 63 Journ. 297. 363, 364, 375. It further appears from the case of Sandwick, 6th, 24th, 25th, and 27th May, 1808 (a), that

(a) The case of Sandwich, 1808.

Right Honorable THOMAS GRENVILLE, Chairman,

Lord Viscount Stopford.
Hon. John Meade.
Earl of Mexborough.
Earl Gower.
William Shipley, Esq.
Sir George Bowyer, Bart.
Gustavus Rochfort, Esq.
Hon. Andrew Foley.
Edward Miller Mundy, Esq.
Charles Manners Sutton, Esq.
Hon. Booth Grey.
Sir Charles Morgan, Bart.
Richard Mansell Philips, Esq.)

Petitioner-Charles C. Morgan, Euq.

Sitting Member - John Spratt Reimer, Esq.

Sir William Elford, Bart.

Counsel for Petitioner-Mr. Pell, Mr. Reader.

Counsel for sitting Member-Mr. Warren, Mr. Gurney, Mr. Elwin.

Mr. Morgan complained, by his petition, of the undue election and return of Captain Rainier upon various ground, not material with regard to the point upon which the case was decided.

5-22-18.

the settle to reperior time has been given; on the settlers to the sitting member; of an intention to Petition

There was no petition from any electors. Previous to the trial of the petition, the regular notice, under the standing order of the house of the 21st Nov. 1717, was given on the part of the sitting member, that it was intended to question the petitioner's qualification.

The petitioner gave in his qualification (as he had done at the election) as heir apparent to his father, Major-general Charles Morgan, whom he stated to have such a qualification as would intitle him to sit as knight of a shire.

The counsel for the petitioner, having opened his case, and called the mayor, to produce the poll-hook (from which it appeared that the only candidates were the sitting member and the petitioner); the counsel for the sitting member took an objection to the petitioner proceeding further in his case, upon the ground that he had not a sufficient qualification to entitle him se tit in the house of commons; and offering at the same time to prove, by evidence, that his father, as heir apparent to whom, he ruppessented himself to be qualified, haid not a sufficient qualification to be a knight of the shire. They insisted that the only ground upon which he could petition was, that he was aggrieved by not having been resurned, having flat a right so to be; but that lie could not be said to be aggrieved by not having been returned, if he were are qualified to sit, because unless he were qualified, he could have no such right, inasmuch as in that case he was not intitled to be returned.

The counsel for the petitioner contended that this evidence to the peritioner contended that this evidence could not be gone into in this stage of the case that although the question as to the petitioner's qualification might

Petitions of lst and addition to the qualification of a petitioning candidate, this will be inquired into in the first instance.

question the qualification of the petitioner, the select committee will postpone their inquiry into the general merits of the case, until the question as to such qualification shall have been disposed of; and this upon the same, principle, that it would be fruitless for a petitioner to struggle for a seat which he could not hold.

ultimately arise, yet that it could not be made a preliminary question, so as to prevent the trial of the merits of the election and return. The committee, however, decided, that the sitting member might go into such evidence.

Herqueps the points of the petitioner, to prove that he had not a sufficient qualification to entitle him to sit as a knight of the shire: The petitioner, however, admitted the fact.—

Another argument then took place upon the effect of the evidence.

Hotticial a bin of the colors of with 139 for the evidence.

After which, the committee came to the following resolutions: That it is the opinion of the committee, that the petitioner was not qualified to be a candidate for the cown applicationer was not qualified to be a candidate for the cown application of the committee, that the course of the committee, that the course for the petitioner shall not be permitted to proceed in his case."

The committee dame to the further resolution, and on the 27th May this shairman reported to sherhouse it friend John, Spirate Raisier, East, was duly elected or And that the petition of Charles C. Morgan, Esq. did, not appear to the committee to be frivolous or vexatious."

(a) For those classes, see mid. 82, 85,

3. As to the objection that a petitioner petitioning as an elector is disqualified to vote: cornal making of the case, and the

With respect to petitions of the first, second, and third classes (a):

This objection is similar in principle to those which have been just mentioned, as applying in altimately arises, cor it 🕾 the case of a candidate. question, so as to pronamed to staying the

tion and recurs. He The ground upon which an elector is ner mitted to petition is, that he has a direct and positive interestain: the:return coftholorogeprodrson reand that appetitioner; in such tast, indet really and legally be an elector, has been already seen. If he be no elector, he has no sufficient interest whereupon to found a petition. Live

For the same reason, a person who has a title. A person haven tally squared out to the last a title of the same reason. to, he an elector, but is incapacitated from noting be an elector, by some personal disqualification, cannot legalige fied from votbecome a petitioner, inasmuch as not being able petition. to exercise his franchise, it is for these purpose and in beginning in heating and the remaining and the same as if he had none. Case."

no The cased in which this point has arisen fias been that of an alleged disqualification by bilbery; but the same reason would hold in any other case of disqualification.

(a) For these classes, see ante, 82, 83.

Petitions of 1st, 2d, and 3d

above doctrine.

That such has been considered as the law, (though, perhaps, it cannot be said to have been expressly so decided), is sufficiently evident, Grounds of the from the admission of testimony to substantiate such objections to petitioners (a).

1 Peck. 290. S. C. ante, 1 vol. 580, (n.) and post, 137. Evidence of bribery admitted against a petitioning elector.

Caermarthenshire, 1803.—Mr. Philipps petitioned, as an elector, against the return of Mr. Hamlyn Williams. The counsel for the latter made an objection to the petition being heard, and proposed to prove, by evidence, that he had been guilty of receiving a bribe at the last election, arguing that on that account being dis-" qualified to give at vote, he was also incapable of presenting a petition. Evidence was produced got and gas and to do house of commons.

funde), In the case of, Here-ing for the vindication of the fordshire, 1803, the decision was not narrowed to any one point, but, in addition to the objections already stated to have been made to the petitioners against Sir George Cornewall, it was insisted, as to four of them, that they being electors, had received tickets, which were to entitle them to 5s. each, and, therefore, that they were accomplices in the offence of bribery (the giving such tickets being the bribery alleged against the sitting members.)

To this it was answered, that this was a parliamentary proceeding; perhaps, strictly speaking, neither civil nor criminal; but a proceed-

purity of elections, not reducible to any of the rules which govern proceedings in the courts of law. It was contended further, that there was no case, nor any principle of parliamentary law, which excluded even accomplices., from becoming petitioners. It was even said, that there was no reason why men, who had received bribes themselves, should not be heard as petitioners to set aside an election on the ground of corruption.—Upon some, or all of the objections (ante, 117. 119. 121.) the committee decided, that the petitioners should not proceed. 1 Peck. 211 to 214.

in support of the objection. After argument upon the effect of which, the committee deter- Pentions of mined that the petitioner might proceed.

Spirit is as all the applies of a consequently and in a

lst, 2d, and 3

SECTION 6. Of the form of election petitions, and the degree of minuteness required in the allegations therein.

IN this section it will not be necessary to distinguish the classes of petitions. The matter being, in some degree, applicable to all 290 but. fection, argainst that on that is on the con-

When it is intended to impeach the validity Petition to of an election or return, a petimon must be pie- ciac charges. pared and presented to the house of commons, stating, in proper and respectful language, and without impertinent matter, the grounds upon which such election or return is alleged to have been insufficient (4). was no casi, nor aly prin-"(a) For the form of a permion, see App. eccept. er seg. 11. Ti shbuild be fairly written of partiment." And it would be negligible that there should be in hiterification or era Sured In the case of a peti-tion respecting an inclosure act, where there was an era-The in the braver, the house Pererred 4: To a committee to diquire and report by what means it came to be erased, on blook a routing

ceed, 1 Prck, 211 to 214.

usive freezi made to the peticioners against are election and whether it was previous or subsequent to the sighific thereof! 29th Jan. 1768!"51 **ชื่อนีกร. 358** ัจพ สมเด็ต เรางารถ "It seems that a trifling incorrectness of expression will not vitiate a petition, as where a petition was stilled of several, but was signed by one only. Although it was a disputed case, no objection was made ouths Heads Seuford, 1785. v praceeding; outhors -09910 F

Petitions in queneral language

patitions as in pleadings at law to but the nature of the case intended to be made; an the part of the petitioner, must distinctly and expressly appear in such manner as to possess the house, and the opposite party, in a general ways of the sort of objections which are to be brought forward.

The strictness in this particular has shown up in more modern times, principally singe, the passing of the Grenville Act (a); but there has now begin a succession of cases, in which the question has been raised, whether the matter proposed to be proved were sufficiently pointed at by the allegations of the petition, in some of which an objection upon this ground has prevailed, and in others not (b).

It is not practicable to lay down any broad

(a) Mr. Luders, in his note (A) to the case of Nairs, allows flow very general the ellegations in petitions formerly were, and what latitude was given with respect to the evidence in support of them, 3 Lud. 404.

standing the decisions in the second class of these cases, is in the more prudent way, as well as the more respectful to the house, to state the

(a) Mr. Luders, in his charges as distinctly as poste (A) to the case of Nairn, sible.

It is not necessary to state the names of voters objected to, where that is the ground of petition; but it is usual to point out the sort of objection intended to be raised against each class of voters. If the objection be that there was any irregularity in the election, such irregularity ought to be alleged.

wal leaf synciation of the factorist in a chieff in which in the law Campunity be well extend by and wanted with the Politica in of the case abstraightness walls doubt appeared the petitioner, must distinctly and expressly. annations, were noticelessed by the subsection of the second seco Porcymentioned incide order in which they have the sort of objections which are to hebreused forward

1. As to the cases wherein the objection of insufficiency of statement in the petition has up in more modern time and agree 1: billinging passing of the Greneuth in the chast 94 Stidbury 1 18th Nov. 1768 266d a 18th Feb. 32 Journ 43. 1770. The petitioner's counsel proposed to Insufficient fireve that several of the persons who voted for to disqualithe sitting members were intrapalified ; dbut fications of the house (a) would not admit it; the betitions containing no allegation upon that head infort specific, than " that the petitioning candidate ought to have been returned."

Petersfield, 1775. Under a petition, setting 3 Doug. 3, and forth, that Sir Abraham Hume, Bart., stihigh sheriff for the county of Hertford," William disqualifica-Jolliffe, and the petitioner, (Mr. Luttrell), Were didate. candidates; it was proposed, on the part of the

a comparison in the elements of the conjust of the

legation as to.

⁽a) This case was tried at the bar of the house. See the case of Nairn, 1786, post. Sect. 10.

Sect. 6: Petitions in' 'general.' lattery to object to Siral. HIJ as incligation dut it was insisted, on his path, that there with nice express allegation to that effect in the petition, the words following the name of Siral Hubeing merely descriptio persone. The shammittee resolved, that is the counsel should not be performed mitted to argue the point of the incligibility of Siral H., as high sheriff for the country of Hall the same incligibility not being an altegation in the petition.

4 Doug. 87.
143.
S. C. ante,
1 vol. 108.
160, (n.) 161.
Insufficient
allegation of
irregularity of
precept, contrived by she
riff to serve a
candidate.

Southampton, 1776.—The committee having des cided that Mr. Fleming, the sitting member, was eligible; it was proposed, by the counsel for the petitioners, to prove that the sheriff of Southumpa ton, in making out his precept to the returning officers, had not followed the words of the with as is the practice, but had omitted the noturnes clause; and, further, that this was done from improper partiality, and with a view to berve Mr. Eleming. On his part, this evidence was objected to as inadmissible, there being no charge on that ground, in the petition. It was answered, that the general allegation of the undue return of Mr. F. was sufficient to that in such proof. But the committee resolved, "that the evidence proposed to be given, could not be gone into, the matter not being alleged in the petition."

tuliondoligi1864 as The petilioning mandidates! Sic Wattern dieuest alleged inchis petitione abate Petitions in the poly commenced field nine project in the greek, 271. morning of the 7th, Sth, and 9th of Loho, and S. C. ante. closed or reacts of those days at the enough to be in thegasternoon of a But an accomplaint swas, headle that tithe time was shorter than is allowed they to irregularity in taking the law to The goundel for the petitioner proposing poll to prove that the returning officers in a discounties nued the poll open only six hours. instead: of seven, which they contended was required by (See 1 vol. 629. law the counsel for the sitting members insisted that the petitioner was not intitled as a sail bimself of this matter, not having stated it in his petitions that the above statement was matter of recital only, and not of complaint, and could not have been meant to be understood as a ground of charge against the returning officers. The committee determined. "that the counsel for the petitioner should not give evidence of the number of hours spent each day in polling, that not being stated as a matter of complaint in the petition."

allegation, as

Caermarthenshire, 1803.—The petitioning can- 1 Peck, 286. didate, Mr. Paxton, complained by his peti- S. C. ante, 132. tion, (inter alia) that the sheriff had appointed Insufficient alseveral persons to act for him in the different legation as to

appointment of sub-sheriffs.

Sect. 6.
Petitions in general.

booths, who behaved in the most partial, arbitrary, and illegal manner.—Upon his counsel insisting, as a ground of complaint against the sheriff, that the appointment of sub-sheriffs was wholly illegal, and unknown to the law the committee, (there being no other statement is the petition at all relevant to such a charged decided, "that it was not competent for the illegality of appointing sub sheriffs, that not being an allegation in the petition," or

41 Journ. 155. 1 Lud. 406, 407. In the case of the county of Nairn, 1786, (a), where certain voters were objected to by name in the petition, which also contained general allegations, that A. B. was returned instead of C. D., a question was made, whether the vote of a person, whose name was not among those in the petition, could be objected to The decision was that it could not; but the language, of this resolution is so far qualified, as to make it, perhaps, not generally applicable.

(a) For this case, see post. Sect. 10.

Downton, 1784.—Upon an intimation, on the part of Mr. Bouverie and Mr. Scott, who having been returned by the person who was adjudged by the committee to be the legal returning officer, of an intention to contend in support of

three votes, which had been tendered for them, and red jected; the counsel for the petitioner said, that he should oppose it, on the ground, that their petition contained no allegation to that effect. But these votes were never afterwards mentioned. 1 Lud. 279.

-idm Astreo dases where the objection of inwifficiency of statement in the petition has not remain in the series, es a grand of completel effettetelie corpicionant of sub-should was the boundaries of the od Novehampton, 10th and 22d November, 1768. and 7th Feb., 1769.—Mr. House complained, by his petition, that the returning officers, from gation of parthe canvass, gave note- turning officer. ribus and repeated proofs of their attachment to the other candidates: The petitioner's counsel proposed, under this allegation, to examine a witness to prove the attachment and predefermidiation in the returning officers, in favor of the sitting members; which evidence was oblected to, so far as it related to their behaviour previous to the petitioner becoming a candidate, as Mot being part of any of the allegations of the petition. But the house permitted the evidende objected to, to be given.

32 Journ. 26. 55. 183. 2 Peck. 273.(n) Sufficient alletiality of re-

In the second Cricklade case, 1776.—The pe- 4 Doug. 3. 8. tition, after charging that votes offered for Mr. Sufficient alle-Dewar were improperly rejected, and that votes which evidence for Mr. Peach, the sitting member, were im admitted. preperly admitted, and some of them, under colourable and fraudulent conveyances; contained an allegation, that by these, " and other undue, corrupt, and illegal practices, the latter procured himself to be returned." It was pro-

Sect. 6. Petitions in general. posed, on the part of the petitioner, to prove bribery against the sitting member. This produced a question, as to the admissibility of such evidence, under the above allegation. After argument, the committee determined "that the counsel for the petitioners were at liberty to enter into the proof of bribery by Samuel Peach, Esq. (the sitting member), it being comprehended (in the words) corrupt practices, alleged in the petition (a)."

1 Lud. 415.
441. Adoption 8
C. antenning
1 vol. 52,047 (a)
Sufficient, allege
gation of language
raising the going
question of
want of
member's qualification.

Colchester.—The petition of Sir Robert Smyth of pulling the stated that Christopher Potter, Esq., the sitting member, had been declared bankrupt, and that fill of the benefit of his creditors; that he had no freehold estate; that the petitioner was informed that no more than 2s. od. in the pound had been paid to his creditors, and that for these reasons the petitioner begged leave to represent to the house, that the said C. P. had not, at the time house, that the said C. P. had not, at the time of the election, such an estate in law or equity. Sc. as qualified him to be elected.—It was said, in the part of Mr. P., that the petition did not directly aver the incapacity, but was argumentative, and supposed it by inference from the facts alleged, viz. Having been a bank-storili. But A. Volume of the said of the supposed it by inference from the facts alleged, viz. Having been a bank-storili. But A. Volume of the said of the supposed it by inference from the facts alleged, viz. Having been a bank-storili. But A. Volume of the said of the supposed it by inference from the facts alleged, viz. Having been a bank-storili. But A. Volume of the said of the supposed it by inference from the facts alleged, viz. Having been a bank-storili. But A. Volume of the supposed it by inference from the facts alleged, viz. Having been a bank-storili.

tore, that he was not cliedle, and ought pot to your, yellashipage visited against a si soils and aff. (a)

rupt," &c. &c. That the facts might be true, and yet the conclusion did not follow. That he Petitions in had been a bankrupt, but was afterwards enabled by his certificate.—The committee resolved, "that the petition did contain an express charge of want of qualification against the sitting member.

Norwich, 1787.—Upon the return of Mr. Ho. 3 Lud. 455. bart, a second time, after his former election had (Ib. 441. 445.) been declared void, certain electors petitioned, 1 vol. 144, 145. repeating so much of the petition relating to Sufficient all the former election as contained the charges of capacity by bribery and bribery and treating thereat, and setting forth former electhe resolution of the former committee, upon tion. evidence confined on the part of the then petitioners to the allegations relative to the bribery and entertaining the electors; and stating that they conceived that Mr. Hobart's election, " having been declared void, on the ground of his having violated the acts of parliament against bribery, and entertaining the electors; he was thereby, and by the true construction of such acts of parliament, and according to the law and custom of parliament, rendered incapable to represent the city of N. in parliament at any election to fill the said vacancy. And, therefore, that he was not eligible, and ought not to have been returned at the late election." The

Seet. S. general. ...

counsel for the bethingers, shap been in the the Petitions in the case, stated the direumstances of the former elected "tion, and the general effect of the evidence them before the court. Upon this, the counseledor Mr. Hobart objected to their going linto sticky evidence, upon the ground that there lives or of charge in the petition expressly and directly affecting the sitting member with an offence that should subject him to the incapacities contended for phat it alleged no fact expressly leading to " conta any such a conclusion, meither abribenys more anys more to other, aborge . But the committee resolved lives of retards. latificial agrandient to the charge in the charge in their

Clifford, 353. 355. S. C. ante, 115. 125, and 1 vol. 147. It seems that a prayer that the election may be declared void, and for further relief, is sufficient. whereunder to seat a candidate, without an express allegation that he ought to have been returned.

position); "that the counsel for the petitioners? the sitting off-single-sitting bearing the sitting of the sitting majority over the petacontrol and that by the 31 Cunterbury 11796 In The plentiding chalging Mr. Baker and Mrt Sawbridder the sitting asched bensiowith having been guiltonof briberijotrened ing. nando other loorrupt and illegalq practicasi alleged bhat they had obtained thereby to manibatylofwoles and that the wowlers determent although disabled and incapacitated thyothesel practicate &co At prayed that the collection ands return anight be declared void, and forusuch thing there relief de thouthe house should seem imestaco It was been tended; which the counsel if of the sitting b members that in conformity to the allegations abelipraversof the petition, the petitioners tonido

"that the examplation shield proceed 3

only offer evidence to rendenthe election with but inot to seat the other candidatest bis: G. G. Petitions in Esquand Sir. J. Mit But the committee besolved. Athatiounder the allegations and prayer of the petition at the recounsel should be allowed to get into exidence; theirepult of which might declares George Gipps, Esq. and Sir John Honeywood legally-electeds "transmitation on the metric of the HB should station to have received a continue contende

Middlesex, 1804. Mr. Meinwaring to peti 2 Peck. 1. 4. Sufficient alletions contained an allegation that the pundues gation whereconduct of the sheriff during the election, restoof misconduct highly injurious to the petitioner and toothe lofficer. rights of the real electors of the county; &coulther; the sitting member had obtained a colourable majority over the petitioner, and that by the pantiality and undue conduct of the sheriff he had progured himself to be returned. Evidence being offered of tumultyous proceedings, which had taken place during the poll, and of certain scandalous and indecent exhibitions and insultiinterspeeches directed against Mr. M. which hadi been permitted by the sheriffs in their presence. and in the front of the hustings. Alt was objected. by the counsel for the sheriffs, that the petition contained mosallegation under which this evid: dence could be introduced a It was answered that as general allegation of misconduct, let in proof. of martieulan instances. The committee decided. " that the examination should proceed."

under to admit of returning

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Petitions in general.

1 Peck. 95.
Sufficient allegation of a want of qualification in a sitting member, that he was not "possessed" of a qualification.

Coventry, 1803.—It was complained, by the petition, that Mr. Jefferys, one of the sitting members, was not possessed of a qualification. It was objected, by his counsel, to the terms of it, that the statute of Anne did not require a possession, but only that the member should be seized of, or intitled to: that it would be sufficient therefore that he could be proved to have a title to this qualification. The decision turned upon the qualification itself; but the committee, by entering upon the question, must have considered the allegation in the petition to be sufficient.

The next cases stand upon their own peculiar circumstances, and the like can only arise in cases of double returns.

3 Lud. 173. 195. 203. In a case of double raturn, and one of the persons returned abandoning his claim, the other person returned was so far considered in the' situation of sitting member as to let him dispute the votes of the · first, without any allegations in his petition as to their insufficiency.

Downton, 1785.—There was a double return, in consequence of there being two persons who claimed to be returning officers. Mr. Bouverie being returned by one, and Mr. Conway by the other. There were four petitions, by different sets of freeholders, of which the first was by freeholders in the interest of Mr. Bouverie, complaining of Mr. Serle's having interrupted the poll taken by Mr. Dagge, and having taken one himself, and praying that the return made by him (of Mr. Conway), might be taken off the file. The second petition was by other freeholders,

out the same side; allegithe that Mr? Bottoerie had in clear majority of legal votes, and was Pentions in dalay returned by the preper officer; Mr. Dagge. The third petition was by two freeholders who had tendered their votes for Mr. Bouvere, and which complained that they were rejected. The foliate was by freelishers, on the side of Mr. Comean alleging that votes for him had been illegally rejected by Serle, and illegal votes for Boundario received and a superior and an appropriate the superior and appr the reference with a contract of the sea place to the

soon the commendement of the case, the counsel for Mr. Conway relinquished the claim of Mr. Serle to be returning officer, and Mr. Communis counsel began as for a petitioner. When the counsel on the part of Mr. Conwaii had finished their case, those on the part of Mr. Bouverie opened theirs, and on their proposing to enterwie biections to twelve of Mr. Conwashe water, the counsel on the other side objected to this; contending, that there was no allegation in any of the petitions in favor of Man Between's to warrant it, and that the committees and motoreceive evidence of any other factor characters therein stated. And an amount of the Butteries of the case of anythe marriaged the

Mrs. Cohway hilling " abandonade his staturn, Mr. Bonocric became placed in the situation of a sitting member; that

VARIABLES TO SPECIAL TO SECURE STATE OF THE SE

Sect. 6. Petitions in general. a sitting member alleges nothing in the form of a charge, but is intitled to defend himself as well as he can, in all those ways in which he is attacked.

The committee determined in favour of the admission of the evidence.

1 Fraz. 69. 151. 162. Same point.

Oakhampton, 1791.—There had also been a double return; one by the mayor, of Messrs. St. Ledger and Ladbroke, and the other by the portreeve, of Messrs. Anderson and Townson. The question as to the proper returning officer for this borough being first discussed, the committee determined, that the mayor was the proper returning officer, whereby Messrs. St. Ledger and Ladbroke were placed in the situation of sitting members. In the course of the cause, the counsel for Messrs. St. L. and Ladbroke opened evidence to prove that some voters had been improperly admitted by the mayor to vote in favor of Messrs. Anderson and Townson. Whereupon the counsel for the latter gentlemen said, that if the object of that evidence was to impeach the mayor's poll, in respect of votes admitted for his clients, he must observe, that the petition of Messrs. St. Ledger and Ladbroke contained no allegation of misconduct in the mayor, or that he received votes against them which ought not

to have been received. After this objection had been argued, the committee resolved, "that the Petitions is counsel for Messrs. St. Ledger and Ladbroke be permitted to adduce evidence to impeach the votes on the mayor's poll for Messrs. Anderson and Townson."

Fowey, 1701.—A double return; one return 1 Peck. 512. being made by Mr. Stackhouse, and another by 518. 522, 523. Mr. Mein, each claiming to be the legal return-The committee decided that the ing officer. latter was the proper officer, which established the return of Lord Shuldham and Sir Ralph Payne. Whereupon the counsel for Lord Valletort and Mr. Rashleigh proceeded as petitioners. It was contended, on their part, that Lord Shuldham, and Sir Ralph Payne, could not object to any yote for them, received by Mr. Mein, there being no such allegation in their petition; that they were not entitled to the privilege of sitting members, because that privilege arose from the circumstance of a sitting member having no opportunity of stating his case; that Lord Shuldham and Sir Ralph Payne having had an opportunity, ought to have alleged all the matters which they meant to prove. The committee determined, that it was competent to the counsel for Lord Shuldham and Sir Ralph Payne to impeach any

Sect. 8.
Petitions of 1st and 2d class.

§ 5 (a), the petition must be renewed within four sitting days after the commencement of every subsequent session.

35 Journ. 58. 437. Leave to renew a petition after the proper time refused. In the case of *Dumbarton*, 12th Dec. 1774, and 10th Nov. 1775, which will be presently stated (b), where a petitioner did not renew his petition within the time, but evidence was given of his being abroad on his majesty's service, an application for further time to renew was refused.

59 Journ. 21.

On the 30th November, 1803.—The speaker informed the house, that the petition, complaining of an undue election and return for the borough of Kingston-upon-Hull; and also, the petition complaining of an undue election and return for the borough of Leominster; and also, the petition complaining of an undue election and return for the borough of Shaftesbury; and also, the petition complaining of an undue election and return for the borough of Boston, which petitions were depending before the house, at the end of the then last session of parliament, had not been renewed in the then present session, (which began on the 22d of November); and that in pursuance of an act made in the twenty-eighth year of his present majesty, he had certified into the Court of Exchequer, the recognizances entered into in

⁽a) See ante, 39, (n.)

⁽b) See post, Sect. 10.

respect of the said several petitions; and had Sect. 8. also certified the default, which had been made Petitions of ... in the performance of the condition of the said recognizances.

3. With respect to petitions of the third class (a):

It seems that there is no express regulation, No time for rewith respect to the renewal of such petitions (b), newing po but that the terms of the standing order are suf-App. dexiv. ficiently large to embrace them.

4. With respect to petitions of the faurth Petitions of the class. class (c):

The stat. 34 Geo. 3. c. 83. § 1 (d), directs that. To be renewed. renewed petitions shall be presented within within fourfourteen days after the commencement of every subsequent session. subsequent session or sessions. And by § 2, if any such petition be not renewed, the judgment of the committee as to the right reported upon, is to be final and conclusive in all subsequent. elections.

- 5. With respect to petitions of the fifth Petitions of 5th class. class (e):
- (a) For this class, see ante,
- (b) Ex cauteld it would be prudent in petitioners of this class, to renew their petitions upon the first meeting of the

house in a subsequent session.

(c) For this class, see ante,.

- (d) For this stat. see ante.
 - (e) For this, see ante. 84.

Petitions of 5th class.
No rules as to renewing.

It is obvious that there need be no rules as to renewing such petitions, it being competent to any person to petition previous to the hearing of the case, without being restricted by his former petition.

Petitions of 1st, 2d, 3d, and 4th class. Renewed petitions to be substantially the same as original ones.

A renewed petition must be substantially the same as the original one. It will not be permitted that it should go beyond that which was at first presented, by the introduction of new allegations, or the addition of fresh signatures, as this would be an evasion of the standing order, which limits the time for presenting petitions. Neither will it be permitted, that any material part of the original petition should be dropped, as that would, in some degree, defeat the law, which forbids the withdrawing petitions without leave of the house. There ought to be no essential alteration, either by insertion or omission (a).

3 Doug. Pref. ix.

There is no express resolution or order of the house marking out this line of restriction; but such has been recognized and acted upon, as the established law of parliament in a variety of instances, and the instructions of the house to committees have long been in conformity to it.

If there be a suggestion by any member, that a renewed petition materially differs from the

⁽a) The safer way seems that the renewed petition shouldbe a copy of that originally presented.

original one; should the difference be apparent. the house will reject it at once; but if there be Petitions of a doubt thereupon, they will refer it to a com- elass. mittee (a) to examine whether the petitions in question are the same in substance, and to report their opinion upon the same to the house.

This has been done in a variety of cases, the general result of which is, that a very trifling difference in substance will be fatal, though it does not seem practicable to give any precise rule as to what shall amount to such difference.

The better way therefore will be to mention the cases in the order of time in which they have occurred. And it may be here observed. that in all the cases where the petitions were not holden to be the same in substance, the committee of privileges and elections were ordered not to proceed any further in the petition.

Reading (b), 6th December, 1698; 24th 12 Journ. 35 November, 1699.—There was a petition in 64. the first session, and a renewed petition in the

(a) It seems that such special references were generally occasioned by some suggestion to the house, (either at the time of presenting the petitions, or afterwards,) of some circumstances making it necessary. See 3 Lud. 168, note (B) to the Honiton

(b) The first petition of Sir Thomas Stamp stated that the petitioner and others stood candidates; that he had the majority of legal votes, and ought to have been returned with Sir Owen Buckingham, and yet that John Dalby, Esq., was returned with him. 12 Journ. 351.—The scSect. 8.
Petitions of
1st, 2d, and 4th
class.

Where the first petition merely claimed the return, and the renewed petition contained allegations of the misconduct of the returning officer, the latter was holden bad.

13 Journ. 83.

second session.—15th Dec. 1699. The house being informed that the latter petition was different from that presented the former session, the committee of privileges and elections were ordered to examine whether they were the same in substance, and to report the same with their opinion to the house, before they should proceed upon the merits of the election.—19th Dec. 1699. The committee reported that these petitions were not the same in substance; and the house agreeing, it was ordered that the committee of privileges and elections should not proceed any further upon the said petition.

12 Journ. 350. 13 Journ. 6-245. 271. Where the first petition was against two members, and the reMitchell, 12th Dec., 1698; 27th Nov., 1st. and 6th March, 1699.—It was referred to the committee of privileges and elections to examine whether the petition presented in the latter

cond petition of Sir Thomas Stamp set forth the names of the candidates, and that they severally appointed a person to give notice of such as they conceived had no right to poll, in order to their being queried and examined: That the mayor forbid E. W., appointed by the petitioner, to give such notice, and several times threatened to strike him if he did, which deterred him from giving notice, and many were polled who had no right: Whereupon the petitioner demanded a scrutiny, but the mayor

would allow him but two hours time, to refresh and procure friends to assist in the scrutiny, although 1340 persons were polled; that the petitioner, and his friends, came at the time and place by the mayor appointed; but before that, he had declared the election for Sir Owen Buckingham and Mr. Dalby, without any scrutiny. That Mr. Dalby, by promises and threats, procured himself to be returned, though the petitioner had a majority of legal votes, and ought to have been returned. 13 Journ. 5.

session was the same in substance with that presented in the former (a). The committee Petitions of reported that it was their opinion, that the pet class. titions were not the same in substance. And newed petition they were therefore discharged from proceeding thereupon.

1st, 2d, and 4th

was against one, the latter was holden bad. And see post, 158.)

The only material difference seems to have been, that the first petition was against two members, and the second against one only.

Dartmouth, 12th December, 1698, and 28th 12 Journ. 352. November, 1699.—There was a petition, and a Same point.
Renewed petirenewed petition (b). The house being ac- tion rejected

13 Journ. 7. by the house.

Antony Row, Esq., set forth, "that at the election of members to serve, &c. the petitioner had a very great majority of legal votes for him; but that the portreeve of the said borough had unduly returned Sir John Hawles and John Povey, Esqrs. to the prejudice of the petitioner's right: and praying the house to take the matter into consideration, and to give him such relief as the house should think fit."

The second petition of Antony Row, Esq., set forth, "that the portreve of Mitchell, in the county of Cornwall, hath unduly returned Sir John Hawles as a burgess, to serve in this present parliament for the said borough, in manifest wrong to the petitioner, who had a great

(a) The first petition of majority of legal votes: and praying such relief as may be consistent with the jusof the house."

> (b) The first petition of Mr. Whitrow set forth, " that he was duly chosen a burgess to serve in this present parliament, for the borough of Clifton-Dartmouth-Hardnesse. in the county of D.; yet the mayor had returned Sir Joseph Herne, and Frederick Herne, as chosen."

> The second petition of Mr. Whitrow set forth, "that Sir Joseph Herne, and the petitioner, were duly chosen members to serve in this present parliament for the borough of Clifton-Dartmouth-Hardnesse, in the county of D.; but the mayor of the said borough was prevailed with to return Frederick Herne, Esq., in wrong to the petitioner.'

Sect. 8. etitions of st, 2d, and 4th quainted that the former petition was against both the sitting members, and taking notice that the present petition was only against one of them, a motion for referring the petition to the consideration of the committee of privileges and elections was negatived.

2 Journ. 352. 3 Journ. 4. 9. Fowey, 12th December, 1698; 16th and 29th November, and 14th Dec. 1699 (a). The house

(a) The first petition of Shadrack Vincent, and Henry Ashurst, Esors. set forth that at the election of members to serve in this parliament for the borough of Fowey, in the county of Cornwall, the petitioners were duly chosen, by a great majority; yet such was the partiality of Jonathan Tincomb, portreeve of Fowey, that before the election he declared he would not return the petitioners, though they had never so many votes; but would return one of the sitting members, if he had but four votes; and, accordingly, did falsely return Sir Bevill Greenville and Mr. Vivian: and being told, "that the petitioners might recover great damages against him for such false return," he said, "he hoped to get £500 by the bargain;" and several other corrupt practices were used in behalf of the sitting members: and, therefore, the petitioners prayed the relief of the house, in the premises.

The second petition of Shadrack Vincent, Esq., set forth, that at the last election of burgesses to serve in this parliament, for the borough of Fowey, in the county of Cornwall, the petitioner stood a candidate, and ought to have been returned a burgess; because a great majority of the legal voters appeared and voted for him; but Jonathan Tincomb, portreeve of the said borough, arbitrarily, and contrary to the ancient rights of the said borough, refused to poll the petitioner's voices, who had almost all the qualified voters; and wrongfully returned Sir Bevill Greenville and Thomas Vivian, Esq., declaring he would not return the petitioner, though he had never so many voices; but that he would return Sir Bevill Greenville, if he had but four: and the portreve being told, that the petitioner might recover damages against him for such his false return, answered, " that he hoped to get £500.

being informed that the then petition of Shadrack Vincent, Esquire, was different from that which Petitions of had been presented the last session by Shadrack class. Vincent and Henry Ashurst, Esquires: It was Where there were two petiordered, that it should be an instruction to the first petition committee of privileges and elections that they and in the reshould examine whether the petition presented only one, the latter was that session were the same in substance with nevertheless holden sufficithat which was presented the last session; and ent. that they should report the same, with their opinion therein to the house; and that the committee should do the same before they should proceed upon the merits of the said election.-The committee resolved, that it was their opinion that the petition of Shadrack Vincent, Esq., presented to the house of commons that session of parliament, touching the late election for the borough of F., was the same in substance with the petition of Mr. Vincent and Henry Ashurst, Esq., presented to the house of commons the last session, relating to the said election; and the house agreed.

newed petition

Saint Ives, 14th Dec., 1698, and 16th and 12 Journ. 355. 29th Nov., 1699.—There having been a peti- 62. tion in which the right of election was stated as

not return the petitioner, though the majority signed and scaled an indenture for returning him as one of their burgesses; and many other

by the bargain," and would ill practices were used in behalf of the sitting members; and praying such relief in the premises as the house shall think fit.

class.

Sect. 8. Petitions of

Where the right of election was differcutly stated in the petition and renewed petition, the latter was holden insufficient.

in the inhabitants not receiving alms (a), and a renewed petition in which the right of election 1st,2d, and 4th was stated as in the inhabitants of full age not receiving alms (b). The house, upon similar in-

- (a) The first petition of several persons, inhabitants within the borough, set forth "that the right of election of members to serve in parliament for the said borough is in the inhabitants not receiving alms; and the petitioners, as such, demanded to be polled at the last election, for Sir Henry Hobart; but the mayor, in an arbitrary manner, refused to let them be polled; declaring, that by the late King James's charter, the right of election was in the mayor, capital burgesses, and assistants only; and that he would suffer no other persons to be polled, who, with himself, are but ten in number;" and thereupon did make an illegal return of Sir Charles Windham and James Praed, Esgrs. in great violation of the petitioners' rights; and praying the house to do them justice in the premises, as they shall think fit."
- (b) The second petition set forth, "that burgesses to serve in parliament were, time out of mind, chosen for the said borough by such of its inhabitants as were of full age and did not receive alms; and at the last election of burgesses, the petitioners, and

divers other qualified voters, appeared and demanded to be polled for Sir Henry Hobart, baronet; but the mayor of the said borough arbitrarily refused to let them be polled: and declared that by virtue of the late King James's charter, the right of election was solely in the mayor, capital burgesses, and assistants; and that none should be polled but those that voted under that charter: and, thereupon, he hath illegally returned Sir Charles Windham, to be one of the said burgesses, in manifest wrong to the ancient rights of the petitioners; and praying that such justice may be done them, as the house shall think fit."

Upon similar information to the house, and instruction to the committee, as in the former cases, the committee resolved, that the petition, &c. presented to the house of commons this session of parliament, touching the late election for the said borough, is not the same in substance with the petition from several inhabitants of the said borough, presented to the house of commons the last session of parliament, relating to the said election.

formation, gave the like instruction to the committee, and on the 11th December, they resolved Petitions of and reported in effect, that the first petition and renewed petition were not the same in substance; and the house agreed.

1st, 2d, and 4

Wigan, 12th Dec. 1698, and 24th Nov. 1699. 19 Journ. 30 There was also a petition (a), and a renewed petition (b).—27th January, 1699, one of the petition com

13 Journ. 5: Where the fi plained of th

(a) The first petition of Sir Alexander Rigby set forth, that at the last election of members to serve in parliament for the borough of Wigan, in the county of Lancaster, many undue practices were used by Sir Roger Bradshaw and Orlando Bridgman, or their agents, viz. by making persons free, after the dissolution of the last parliament, who were not only strangers to the town, but many dwelling in other counties, and altogether unqualified, purposely to vote for them; and denying others their freedom, both before and after, who were of the corporation, and had a right to, and did claim it, because they would vote for the petitioner; and though he had a sufficient majority, upon casting up of the poll, yet the mayor hath returned the said Mr. Bridgman, in wrong to the petitioner; and praying the justice of the house in the premises.

(b) The renewed petition of Sir Alexander Rigby set forth, that at the election of burgesses to serve in this present parliament for the borough of Wigan, in the county of Lancaster, the petitioner, Sir Roger Bradshaw, and Orlando Bridgman, Esgrs. stood candidates; when, and before, many undue practices were made use of, by Sir Roger and Mr. Bridgman, or their agents, as (interalia,) the making persons free after the proclamations for dissolving the last parliament who were strangers to the town, and many of them dwelling in other counties, on purpose to vote for them; and denying others their freedom, who were of the corporation, and had a right, and claimed the same, because they would vote for the petitioner; and yet the petitioner, on casting up the poll, had the majority, and ought to have been returned; but the mayor of the said borough hath returned the said Sir Roger Bradshaw, or Mr. Bridgman, in wrong to the petitioner; and praying the consideration of the house in the premises.

Petitions of 1st, 2d, and 4th class.

13 Journ. 146.

1b. 162.

election of one of the members, and the renewed petition of that of both, the latter was holden bad.

differences in which was that the former complained only of the election of one of the sitting members, the latter of both. Upon similar information to the house, the same instructions were given to the committee.—31st January, 1699. The committee resolved and reported to the house, in effect, that it was their opinion that the two petitions were not the same in substance; and the house agreeing, it was ordered, that the committee should not proceed any further upon the petition.

15 Journ. 211.
283.
Renewed petition, having signatures not in the original one, held not substantially the same.

Colchester, 11th Dec. and 10th Feb. 1706. There had been a petition and a renewed petition; and the committee reported to the house, under their order (a), that they had examined, whether

(a) 11th December, 1706. Within a few days after the commencement of the session, which was the second of that parliament, the house passed a general order, "that it should be an instruction to the committee of privileges and elections, that before they should proceed to inquire into the merits of any petition, presented to the house that session, touching elections, they should examine whether they were the same in substance with such as were presented the last session of parliament." Journ. 211.

16th Nov. 1709, in the beginning of the second session of the then parliament, it was ordered, "that it should be an instruction to the committee of privileges and elections, that they should examine whether the petitions to them referred were the same, and signed by the same parties, as those presented the last session of parliament." 16 Journ. 213.

Leominster, 28th March, 1715; 23d February, and 4th March, 1716; 2d and 6th April, and 8th May, 1717.—There was a petition and a renewed petition, and instructions were given to the committee, to examine whether they were the same in substance; but the case went off, Mr. Gorges, who it was

the petition complaining of an undue election of Sir Thomas Webster, was the same in substance, Petitions of with that complaining of the same election, class. presented in the then last session; that the body of the petition was verbatim the same, but there being two fresh signatures to the last petition, instead of those of two other persons who had signed the former, they resolved, "That the petition of Richard Daniel, and others, free burgesses of Colchester, was not the same in substance with the petition of Samuel Great, and others, free burgesses of Colchester, presented to the house the last session;" and the house agreeing, the committee were discharged from hearing the matter touching the merits of the election.

1st, 2d, and 4

Seaford, 7th December, 1790; 1st and 14th 46 Journ. 38. February, 1702.—There was a petition, and a 381. renewed petition, by Sir Godfrey Webster and

alleged ought to have been returned, having failed to put in his qualification, upon notice to him to do so. 18 Journ. 28, 478, 486, 522. 520. 543.

Mr. Luders mentions an instance of a renewed petition, containing an additional allegation of bribery and illegal practices, by the sitting member; but this point does not seem to have been touched upon.-Saltash, 7th March, 1716. 18 Journ. 494.

Gloucester, 18th Ochtoer, 1722; 20th January, 26th February, and 11th March, There was a petition, and a renewed petition, and similar instructions were given to the committee. But it appears, that Sir Edward Fust withdrew his petition. 20 Journ. 24, 25. 238. 273. 291.

See also the case of Glascow, 13th May, 1729, where the renewed petition was rejected, post, Sect. 10.

t, 2d, and 4th

7 Journ. 414.

John Tarleton, Esq., which were referred to a committee, to examine whether they were the same in substance, and if different, in what the difference consisted .- 23d February, 1792, the committee reported. That they were the same in substance, except inasmuch as the petition presented in the former session contained the following allegations, (that is to say), "That several persons who voted for the said John Sargent and Richard Paul Jodrell, (who were the sitting members) had previously asked, received, and taken money and other reward, and had agreed and contracted for money, gift, and reward, to give their votes in the said election, and had been guilty of other illegal and corrupt practices, by means whereof their votes so given are, and ought to be declared to be void:" But that in the petition presented in the then present session, the allegation, as to bribery and corrupt practices, seemed confined to the sitting members and their agents only, in the following words; (that is to say), "that at and before the said election, various acts of bribery and other corrupt practices were committed by the sitting members and their agents, and undue influence, of various kinds, were practised by them, whereby your petitioners were prevented from being returned. as they ought to have been."-And that it further appeared to the committee, that the petition,

presented in the then present session of parliament, was conceived in general terms, whereas Petitions of the petition presented in the then former session class. set forth the different allegations more specifically; but that the general allegations contained in the petition last presented were in substance 47 Journ. 485. the same with the specific allegations contained in the petition first presented, except as theein mentioned (a); and the house resolved accordingly.

1st, 2d, and 4th

(a) In the above case, on the 6th Feb., 1792.-Mr. Froggut, the agent of the petitioners, presented a petition, stating, in substance, that the petitioners had, in the last session, presented a petition, complaining of an undue election and return, that he, as agent for them, caused a renewed petition, signed by them, to be delivered to the house, but owing to a mistake, the latter was not, in fact, a copy of the petition presented in the last session, which mistake he explained as arising from a wrong draft having accidentally been given to Sir Godfrey Webster, and afterwards to Mr. Tarleton, to sign; and further stating that Sir Godfrey Webster was abroad, and Mr. Tarleton was in Northumberland, and upon these grounds praying for further time to deliver in another petition on their part. 47 Journ. 28.

14th Feb.—The house. was informed that a petition of Sir Godfrey Webster and John Tarleton, Esqr., being a correct copy of that presented to the house the last session, was ready to be offered to the house; and a motion was made that under the circumstances of the mistake, (which were noticed in ' the motion) leave should be given to Sir Godfrey Webster and John Tarleton, to amend their petition by the votes of the house, so as to render the same similar to the petition presented to the house by Sir G. W. and J. T. Esq. in the last session of parliament, But this motion was withdrawn - 47 Journ. 381.

23d February 1792.—The ; committee, at the same time, with their report aforementioned, reported also upon Mr. Froggat's petition, stating the circumstances of the mistake as they appeared in. evidence. 47 Journ. 414.

Sect. 8. Petitions of st,2d, and 4th class.

In such inquiries, with regard to renewed petitions, it has frequently appeared that some of the persons who had signed the original petition, did not also subscribe the renewed one; but this circumstance alone, however great the proportion of the omitted names, provided there be some one same renewing subscriber, will not vitiate the proceeding.

16 Journ. 222. Renewed petiby some, but not by all of the original petitioners, mufficient.

Lestwithiel, 23d November, 1709.—It was retion subscribed ferred to the committee of elections and privileges to examine whether this, among other petitions referred to them, was the same, and signed by the same parties with that presented the last session. They reported that the petition presented the last session, complaining of the undue election and return of James Kendall and Joseph Addison, Esqrs., was signed by William Taprell, and eighteen other persons, and that the petition, under the same title, presented in the then session was signed by the same eighteen persons, without the said William Taprell: The house ordered that they should proceed to hear the matter of the petition, although William Tuprell, who signed the petition, was dead.

16 Journ. 222. Same point.

Cirencester, 23d November, 1709.—The same committee, upon the same inquiry, reported that the petition, presented the last session, complaining of the undue election and return of Charles Cox and Allen Bathurst, Esqrs., was Petitions of signed by John Curtis and Edward Butler, and class. fourteen other persons, and that the petition, under the same title, presented that session, was signed by the same fourteen persons, without the said John Curtis and Edward Butler. committee were ordered to proceed to hear the matter of the petition, although the same were not signed by the persons in the report mentioned, who signed the former petition.

These cases have been followed by those of 21 Journ. 192. 1b. 203. 399. Westbury, 24th January, 1728 (a); Bridport, 25 Journ. 449; 450. 669. 3d February 1728, and 14th January, 1729 (b); Same point. and Wells, 27th Nov. 1747, and 13th December. 1748 (c), which have fully established that a re-

(a) Notice being taken in the house, that the petition of Sit John Lambert, Bart., presented to the house, complaining of an undue election and return for the borough of Westbury, in the county of Wilts, is a petition of the last session, renewed, as well in the name of Anthony Cornish, Esq., as in the name of the said Sir John Lambert, agreeable to the former petition, but is signed by Sir John Lambert only; and that said renewed petition was ex-

it should be an instruction to the committee of privileges and elections that they should proceed only upon so much of the said petition, as related to the said Sir John. Lambert.

(b) A petition which had been signed by fifteen electors, was renewed by thirteen only: No objection appears to have been made on this head. 21 Journ. 203.

(c) Notice having been Mr. Cornish died before the taken in the house, that the petition was a petition of the hibited; it was ordered, that last session, renewed, as well Sect. 8.
Petitions of 1st, 2d, and 4th class.

newed petition subscribed by some, though not by all of the original petitioners, is sufficient (a), at least so far as it may affect the interest of such petitioners as renew their signatures.

It appears, from the following case, that the establishment of select committees has made no alteration with respect to the manner of such inquiries, and also that a committee for this purpose may be appointed at any time before the day for taking the petition into consideration.

1 Doug. 153, 154; and 3 Doug. Pref. x. 35 Journ. 102. 410. 457. Morpeth, 8th February, 31st October, and 23d November, 1775.—Mr. Eyre, whose election had been set aside, having had liberty to petition

in the name of George Speke, Esq. as in the name of William Piers, Esq., agreeable to the former petition, but is not now signed by the said Mr. Speke. -And the before-mentioned entry in the Journal of the house, of the 24th day of January, 1728, in relation to the petition of Sir John Lambert, complaining of an undue election and return for the borough of Westbury, in the county of Wilts; and the instruction given to the committee of privileges and elections thereupon being read: It was ordered, that it should be an instruction to the com-

mittee of privileges and elections, that they should proceed only upon so much of the said petition of the said Mr. Piers, as related to Mr. Piers, 25 Journ. 669.

(a) Midhurst, 3d February, and 23d November, 1803.—
The first petition was in the name of Mr. Holt White, the unsuccessful candidate, and of certain burgage-holders of the borough. The renewed petition was in that of the candidate only. The petition was tried, and no objection was made to its sufficiency, 2 Peck. 146.

within a fortnight of the time of the decision. He presented such petition, but it was not taken Petitions of into consideration that session. In the beginning class. of the following session, he presented a renewed Committee petition, and this was ordered to be taken into pointed to consideration on the 26th Jan. following: In the ther renewed interval before which, the latter petition being same as origithought to contain new allegations, the house was time before moved (viz. on the 23d Nov.), that a committee ing the petishould be appointed to examine whether the two sideration. petitions were the same in substance.—One of the objections urged against the appointment of this committee was, that it was too late; that the difference, (if there really was a substantial difference) between the two petitions, should have been observed when the last was presented; that a day having been fixed for choosing a select committee, the house could no longer take any cognizance of the matter, but that it should be left to the select committee, to discover the supposed variance, and to report it to the house.—After some debate a committee was appointed for the above inquiry (a).

The renewing a petition in every session from the time it is presented until it is taken into

may be apinquire whonal one, at sing

⁽a) Nov. 24th.—The very leave to withdraw his petiday after this committee was tion. Journ. 450. appointed Mr. Egre obtained

Petitions of 1st, 2d, and 4th class.

consideration or withdrawn, has been stated to be an essential step. In the following case, a question arose how far the regularity of a renewal in a session in which the petition is not taken into consideration, is necessary, in order to its consideration in a subsequent session.

8 Lud. 143. 40 Journ. 85. 98. Where a petition is presented one session, and renewed in the second, and the third, in is tried, evidence may be then admitted, to shew that that renewed in that second session was fraudulent. 41 Journ. 152. S. C. post. 174.

Honiton, 3d and 7th June, 1784; 16th and 21st Feb.; 3d March, and 25th April, 1785.—A petition of eight electors, charging the sitting members with bribery, having been presented; but not having been tried in the first session, was renewed which latter it in the same form at the commencement of the Upon such renewal, four of the above second. electors petitioned, stating that if they had signed, it was previous to, or at the commencement of the last session; and disavowing their belief of the facts charged, prayed to be permitted to withdraw their names.—On the 27th January, 1786, being the beginning of the third session, the original petition was renewed, signed by only two of the eight who presented the first.

> Upon the opening of the case, it was objected on the part of the sitting members, that the petition, when renewed in the second session, had been fraudulently imposed upon the house for a genuine renewed petition; when, in fact, it was only a duplicate of the original petition

presented at the first meeting of parliament, and signed at that time, and that it was presented Petitions of afterwards without the authority of the persons class. signing it. From whence it was to be inferred. that the present petition, depending upon this fraud and irregularity, had not the proper authority of a renewed petition; and therefore ought not to be tried. It was also proposed to prove corrupt conduct in the petitioners, with respect to the petition.

To this it was answered, that even admitting the fact alleged, with respect to the renewal in the second session, it would not affect the trial; which proceeded upon the petition presented to the house in the then session.—That the house, upon the counter-petition, on the first renewal, might have inquired into the facts, but that they could not then be gone into. - The committee resolved, that "the counsel for the sitting member might produce evidence of the invalidity of the petition:" with this explanation, " That the counsel might proceed to shew the irregularity of signing or presenting the second petition," as distinguished from the charge of corrupt conduct in the petitioners.

Evidence was then gone into, both with regard to the irregularity of presenting the second

etitions of st, 2d, and 4th petition, and upon the question of fraud (a). The points before the committee being, whether the renewal of the petition were not so irregular, as that the petition could not be entertained; and whether fraud had not been practised upon the house by the petitioners, or on their behalf, and if so, whether it were not a matter sufficient to vitiate and annul the petition itself (b).

The committee seem to have considered the sitting members, as having failed in establishing

(a) The evidence adduced on the part of the sitting members tended to prove, first, that the petition pre-sented to the house in the second session, was signed as a duplicate of that which was presented in the first session, and about the same time, viz. in the beginning of that session, in order to be kept as a copy, and not with any view of its being presented in the second session as a renewed petition. And, secondly, that whether it were signed as an original petition or a duplicate, the person by whose means it was presented to the house, had therein acted without the authority of the petitioners.

On the part of the petitioners, the evidence went to shew, that as to the two persons, whose petition was then under consideration, there was no irregularity. and that they had acted consistently in both the renewals of the petition, in order to prosecute it with effect: And in respect of the others, that their signatures to the second petition were made at a time, subsequent at least to the last day of presenting petitions in the first session. Therefore it was argued that they must have been intended for its renewal in the following session, since there could have been no other reason for obtaining their signatures at such a time.

(b) It should seem that in the case of a petition by electors, the fraud of some only cannot affect the petition, except as to them, and that in order to defeat it upon the ground of fraud, it must be brought home to

those points upon which they founded their objections to the petition: For, after hearing the Petitions of observations of the counsel, and the evidence on class. both sides, they resolved, "That the petitioners should proceed to prove the allegations of their petition."

SECTION 9. Of withdrawing election petitions.

AN election petition, when once presented to the house, cannot be withdrawn at the mere pleasure of the parties.

It is necessary that the house, whose jurisdiction in this particular has been left to it by the statutes, should be satisfied, that there is no fraud (a), that all parties consent, and that such proceeding is proper, under the circumstances of each case.

(a) In the Middlesex case, Glanv. 113 .- Upon an application to withdraw a petition it was declared to the committee, that the petitioners, being better informed and advised than when their petition was first preferred, desired to withdraw the same, and this was also attested by Mr. Roberts, who presented the petition, and two other

members of the house. The resolution of the committee ran ' that for so much as there appeared no suspicion of fraud or practice for withdrawing the petition, and so good testimony was given to the contrary thereof, the committee thought fit it should be withdrawn as desired.' This was approved and ordered by the house.

Sect. 9. Petitions in general. Upon the first establishment of select committees, and for some time afterwards, where there was consent, it was almost a matter of course, that a petition should be permitted to be withdrawn.

33 Journ. 27. Leave given on application to withdraw petition. Scarborough, 27th November, 1770.—Mr. Bell, one of the members returned upon a double return, and having petitioned, desiring to relinquish his claim to the seat, applied for leave to withdraw his petition. Leave was given, the order for taking it into consideration discharged, and the clerk of the crown was ordered to amend the return accordingly.

33 Journ. 481. Petition withdrawn on petitioner dying. Callington, 17th February, 1772.—The house being informed, that Mr. Buller, the petitioner, had died after presenting his petition, discharged the order for taking it into consideration.

34 Journ. 415. 468. 505. London, 26th Jan. 17th and 28th Feb.—Mr. Roberts, who had petitioned against the election and return of the Right Hon. Frederick Bull, (then lord mayor) by letter to the speaker, desired leave to withdraw his petition, and the sitting member giving his consent, through a member, who in his place informed the house

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thereof; it was ordered that he should be at liberty to do so (a).

Sect. 9. Petitions in general.

The house, however, afterwards thought it right to make the permission to withdraw a petition a matter of more deliberate consideration in each case, and, with this view, on the 18th Feb. 1782, made a standing order, by the effect 38 Journ. 800. of which, upon a motion for leave to withdraw a petition complaining of an undue election or return, the consideration and debate is not to be entered upon immediately, but to be adjourned till a further day with an interval of at least three days, between the day of the motion and such further day.

App. ccccxeviii.

(a) In the second Cricklade case, 7th February, 1776.-Mr. Dewar's petition was sought to be withdrawn, but no sufficient authority from him for the application was shewn, and the ballot took place. 35 Journ. 517.

Ivelchester, 19th February, 1776, the same application was made, but as it was not made until the day on which the petition was ordered to be taken into consideration, the house thought that they were precluded by the stat. 11 Geo. 3. c. 42. § 4. from proceeding to any other business, except the swearing members, previous to read-charging the order for taking ing the order of the day for it into consideration was netaking the petition into con- gatived. Journ. 38. 163.

sideration, and upon that ground the committee was appointed, notwithstanding such application. 35 Journ. 563. 4 Doug. 167.

In the above case of London, the application for withdrawing the order was only communicated to the house on the day appointed for taking the petition into consideration; it was, however, by letter, sent to the speaker a day or two before.—See the case of Abingdon, 1st February, 1782. The sitting. member refused his consent to the withdrawing of the petition, and a motion for disPetitions in general.

Petitions were forbidden to be withdrawn, except in certain cases.

This order applied only to the petitions of the first class; it was soon afterwards followed by the stat. 28 Geo. 3. c. 52. § 8. (a) which carried the restriction much further, forbidding the withdrawing any election petition, except so far as it related to the election or return of a member vacating his seat, or dying.

Bet now on subsequent matter, arising and verified on oath, the house is authorised to permit it.

But the law has been again altered by the stat. 53 Geo. 3. c. 71. § 8. (b) which now authorizes the house to permit petitions to be withdrawn upon matter which arises after they have been presented, which is to be specially stated and verified on oath to the satisfaction of the house: And this applies to each of the five classes of petitions before-mentioned.

The house will therefore use its discretion as to giving permission to withdraw a petition.

In the following case (c), a petition was permitted by the house to be partially withdrawn, at least as far as the signatures of some of the petitioners.

3 Lud. 143. 40 Journ. 85. 98. 527. 550. 575. \$81. 886. S. C. 168. Honiton, 1784, 1785, and 1786.—Upon the renewal of a petition of certain electors, charging the sitting members with bribery, and alleging

⁽a) For this stat. see ante,
27.
(b) For this stat. see ante,
(c) This case was before the stat. 28 Geo. 3. c. 52. §
8.

that a third candidate, Mr. Bailey, had the majority of legal votes (a), four of the original pe- Petitions in titioners (the first petition having been signed by eight) presented a petition, stating that if the renewed petition had been signed by them, the truth of the facts in their same was so signed, previous to, or at the commencement of the then last session of parliament; withdraw the names, leave "that being conscious that the facts contained in was siven. the said petition (more particularly alluding to them) were, in truth, void of foundation," they prayed the house to permit their names to be struck off and withdrawn from the petition.

general. Where petitioners disavowed the petition, and prayed to withdraw their

21st Feb., 1785.—The sitting members ac- 40 Journ. 550. quainting the house that they consented, the house discharged a former order for taking the first petition into consideration, "so far as the same purported to be the petition of the four then petitioners;" and gave them leave to withdraw it, as far as it might concern them.

Section 10. Scotland.

THE preceding matter of this chapter may be considered as applying generally to elections

(a) Mr. Bailey had also pe- the beginning of the second titioned, but he died before session. 3 Lud. 143.

Sect. 10.

in Scotland: it remains only to subjoin the mention of some cases which have arisen there; and which, together with one or two peculiar provisions of the law, may be taken in aid of what has been already stated.

(See ante, § 2.) With respect to the time within which election petitions must be presented:

As to petitions of the *first* and *second* classes (a):

35 Journ. 59.
62.
Petitions left with the clerk of the house on the proper day, but after the rising of the house, rejected.

The following case is confirmatory of the law as before stated (b).—Elgin, Banff, Cullen, 20th and 23d Dec., 1774. The petition of Mr. Seton set forth, that Mr. Lockart and Colonel Morris were candidates; that the latter was returned; that the former, being very much indisposed, and confined to his house in London, was not present at the election, and had since gone to Lisbon for the recovery of his health; that Mr. Lockart's friends being convinced that Colonel Morris's election had been brought about by undue influence and unlawful means, dispatched an express to the petitioner with orders to have a petition, in the name of Mr. Lockart, presented to the house, but that that authority not being

(b) See ante, 89, 90.

⁽a) For these classes, see ante, 82, 83.

sufficient, the petitioner dispatched another express to Scotland, to inform them thereof; and that the last night, about nine o'clock, he had received another express, with a petition from Mr. Ogilvy, a constituent member of the borough of Cullen, complaining of the election of Colonel Morris, which he immediately lodged with the clerk of the house. The evening on which the petition was so lodged, was the evening of the day on which the fortnight expired; -under these circumstances, (together with the distance of the place of election, and the badness of the roads), Mr. Seton's petition prayed that that of Mr. Ogilvy, might be received .-- After a debate and an adjournment of the question till the next day, a motion, "that the petition of" George Ogilvy, Esq., referred to in the petition of Mr. Seton, having been lodged with the clerk of the house, on Monday, the 19th day of this instant December, after the rising of the house, on that day, and having the next day been offered to be presented to the house, should be then received," was negatived.

In the following case the petition was received, after the expiration of the fortnight, under the same circumstances as several of those beforementioned (a).

(a) See ante, 91, et seq.

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Sect. 10. **41 Journ**. 610. Petition retime, where ting at the expiration of the time.

Kirkwall, Wick, &c., 25th April, 1786.—The return was delivered into the office of the clerk ceived after the of the crown on the 8th of April.—The house house is not sit. had not proceeded upon business since the And the house being informed that the 13th. petitioner would have petitioned the house within fourteen days after the return was brought in, if the house had proceeded upon business, since the 13th, the petition was received.—In addition to the cases before stated, as to the time of petitioning in the case of an amended return, the following cases were to the same effect.

46 Journ. 87. Ib. 126. In cases of amended returns, the same time allowed for petitioning as upon original returns.

Sutherland, 15th Dec. 1790, and Lanarkshire. 17th Dec. 1790.—There having been in each of these an omission in the name of the member chosen and returned, and the same having been amended by order of the house, leave was given, in each, to petition the house, complaining of the election and return within fourteen days then next (a).

As to who may be petitioners in election See ante, § 3. petitions:

Petitions of 1st and 2d class le be signed as

With respect to petitions of the first and second classes (b):—Petitions must be signed as before stated, in the corresponding section of

(a) See anic, 94. (b) For these classes, see ante, 82, 83.

this chapter (a), (the stat. 28 G. 3. c. 52. \S 1 (b), applying to all elections.) It is also thereby provided that in cases of elections for districts of burghs, a petition may be proceeded upon, if of elections for subscribed by any person or persons claiming to burghs, it is have had a right to vote at the election of any signed by a dedelegate or delegates, or commissioner or commissioners for choosing a burgess for the district.

before-mentioned, except that in cases districts of sufficient if

With respect to petitions of the third class (c): So in petitions The same statute, by $\S 3$. (d), makes a similar provision.

With respect to objections to petitioners in Sec ante, § 5. election petitions not appearing upon the face of the netition:

As to petitions of the first, second, and third classes (e):—The following case may be added to those already given (f).

Stirling, &c. 5th and 9th March, 1713, and 6th 17 Journ. 485. May, 1714.—The house being informed that the Preliminary petition against the election and return was not signatures.

If signatures

⁽a) See ante, 101, 102.

⁽b) For this stat. see ante,

⁽c) For this class see ante,

⁽d) Furthis stat. see ante, 24.

⁽e) For these classes see ante, 82, 83.

⁽f) See ante, 113, et

sect. 10.
not authentic,
petition will
not go on.

signed by the petitioner, instructed the committee that, before they should proceed upon the petition, they should examine into the manner of signing the same. It appearing, upon inquiry by them, that the petitioner did not sign the petition himself, the committee were discharged from proceeding thereupon (a).

As to the degree of minuteness required in the allegations of election petitions:

Petitions in general.

This subject was much agitated in the following case. In principle it seems equally applicable to petitions of all classes.

41 Journ. 155. 1 Lud. 406, 407. The petition went to impeach certain specified votes. Others not allowed to be questioned. without a positive allegation that there were others that were bad.

County of Nairn, 27th January, 1786.—The petition of certain freeholders, after stating objections to certain persons who had voted for Mr. Brodie, the sitting member, concluded,—"And by these means the said Alexander Brodie, Esq. was returned instead of the said George Campbell, Esq. who had in his favour the votes of a majority of the legal electors present at the said meeting: And further, the return of the said Alexander Brodie was brought about by various illegal and unwarrantable acts and proceedings, and the petitioners, therefore, think themselves much aggrieved, and apprehend that the said election

(a) See also the case of Glascow, post, 183.

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and return is an undue election and return," &c. -The vote of A. Rose, whose name was not among those pointed out as questionable by the petition, was objected to, on the ground of undue influence. On the part of the sitting members it was insisted, that the petitioners had no right. by the terms of their petition, to enter upon any objection to his vote.—After hearing the question argued, the committee decided, "That, under the particular circumstances of the petition, the counsel for the petitioners were not at liberty to enter upon the vote of A. Rose."

As to supplemental election petitions:

See ante, § 7.

With respect to petitions in general:—The Petitions in following was a case of a supplemental petition.

Kirkwall, &c. 28th January, 1785. - After the 40 Journ. 461. petition of Mr. Sinclair had been presented, 3 Lud. 250. On discovery complaining of the undue election and return of of new matter, Mr. Fox, a supplemental petition was added, presented, a supplemental setting forth, "That since the petitioner had be presented. complained to the house of Mr. Fox's election, he had found that it took place in consequence of certain corrupt agreements, and other illegal practices by his friends and agents; and praying that the same might be taken into consideration together with his former petition." The matter of the two petitions were heard together.

Sect. 10. See ante § 8. (Ib.)

As to renewing election petitions:

With respect to petitions of the first or second classes (a):

35 Journ. 38. 437. 3 Doug. Pref. vii. Where petitioner, at the time when his have been renewed, was abroad on his majesty's service, an application, on his part, for further time, was refused.

Dumbarton, 12th December, 1774, and 10th November, 1775.—The Honorable George Keith Elphinstone presented a petition against the election and return of Sir Archibald Edmonstone. petition should The petition was not tried in the first session. Mr. Elphinstone, being a captain in the navy, went abroad upon his duty before the commencement of the next session.

> The standing order, limiting the time for receiving petitions, was made on the 27th October, 1775. On the 10th of November, the last day of the fortnight, Mr. Elphinstone was not returned, but a petition from Mr. Seton, who had been his agent upon the former occasion, was offered to be presented to the house, and he attended to give information, touching Mr. Elphinstone's intention of renewing his petition, and the time of his going to sea, as well as his being at that time abroad on his majesty's service. The house declined to examine Mr. Seton (b); and a motion, that "Mr. Elphinstone should be allowed four-

tain Elphinstone to appear as his agent, or to make application for a longer time in his name.

⁽a) For these classes, see ante, 82, 83.

⁽b) Mr. Seton did not produce any authority from Cap-

teen days more, from that day, to present his petition to the house," was negatived.

As to petitions in general:

Glascow, Dumbarton, &c., 30th March, and 21 Journ, 108. 10th April, 1728;—petitions were presented by Renewed peti different electors against the election and return. tion, having signatures not -4th Feb., renewed petitions were presented. - in the original Upon information to the house that the latter petitions were different from the former, it was referred to the committee of privileges and elections to examine, whether the petitions were the same in substance with those presented the then last session, and signed by the same persons; and also to inquire into the manner of obtaining and signing the said petitions; and to make report of their examination and inquiry, with their opinion thereupon, to the house, before they proceeded to hear the merits of the said election. -13th May, 1729. It appeared, upon the inquiry, that a great number of persons had signed the renewed petitions, who had not signed the former ones, and also, that there were alterations in the body of the petitions, whereupon it was resolved that the petitions presented that session were not the same in substance with those presented the former session, and they were rejected (a).

(a) See ante, 159. et seq.

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SECTION 11. Ireland.

App. ecciv. App. cccxxxviii. Rules as to petitions respecting elections in Great Britain generally applicable to those for places in Ireland.

UNDER the general provision of the fourth article of the Act of Union, and the beforementioned (a) adoption, by the stat. 42 Geo. 3. c. 106. § 1. of all the rules, regulations, authorities. and powers given and prescribed by acts of the parliament of Great Britain in force at the time of passing such act of union, the matter of the foregoing sections is, for the most part, to be regarded as applying likewise with regard to petitions in respect of elections for places in Ireland. Some little addition, however, to what has been mentioned is requisite.

As to the time within which election peti-See ante, § 2. tions must be presented:

Petitions of 1st and 2d class.

With respect to petitions of the first and second classes (b):

Petitions to be presented days, after order of the house, or after new return

A standing order which is repeated at the within fourteen commencement of every session (c), gives the same limitation of time for presenting petitions. as before-mentioned in cases relating to elections

⁽c) For this order, see App. (a) See ante, 77. (b) For these classes, see DCxiv. and ante, 88. ante, 82, 83.

in Great Britain, viz. that of fourteen days after the making of such order, or within fourteen Petitions of days after any new return shall have been brought into the office of the clerk of the crown brought into of Great Britain (a). The petition may either be presented to the house within such time, or may be lodged in the office of the clerk of the crown in Ireland.—In which latter case such clerk of the crown is (also by a standing order of the house) forthwith to make a copy of the In the latter petition presented in that office, and is immediately thereupon to transmit the original petition (in the method used in conveying returns) to the speaker of the house of commons to be 839, by him laid before the house.

1st and 2d crown office; may be presented to the house, or lodged in the office of the clerk of the crown in Ireland.

App. Dciv. case, clerk of the crown to keep a copy, and transmit the original to the speaker. See ante, 1 vol.

It will be remembered that returns are See ante, 1 vol. - made to the crown office in Ireland in the 1f no petition first instance.—The above order further directs, the office of the that in case no such petition shall have been lodged in such office within the limited time, land, he is to transmit a certhe clerk of the crown shall forthwith transmit tificate to the a certificate in the like manner to the speaker, signed by himself or his deputy, specifying the and that no time when the return was made, and that no been lodged. such petition had been lodged in his office, previous to the date of such certificate.

be lodged in clerk of the ' crown in Irespeaker, specifying the time of the return, pétition had

(a) The two orders are not quite in the same words.

Sect. 11.
Petitions of 1st and 2d class.

In addition to the cases as to the time for petitioning where returns have been amended:

63 Journ. 150. In case of an amended return, the same time given to petition as upon the original return. 68 Journ. 606. Same point.

Tralee, 7th March, 1808, was the case of a return amended by order of the house, by rectifying the name of the member returned, in which there had been a mistake:—Leave was given to petition within fourteen days, then next.

See ante, 3.

Tralee, 28th June, 1813.—Under similar circumstances, the like leave was given (a).

As to who may be petitioners in election petitions:

See ante, § 103.

With respect to petitions in general:—The rule that a petitioner must prove himself entitled to the character in which he petitions, was confirmed by the language of the resolutions in the following case, though under the particular circumstances there, it was not enforced to the full extent.

1 Peck. 217. 233. Character of petitioner to be proved in first instance. Waterford, 1803.—Upon the opening the case for the petitioner, Sir John Newport, who petitioned as a candidate, it was insisted, upon

(a) See ante, 94.

the part of the sitting member, that the production of the poll was necessary, before any Petitions of further proceedings. It appeared that the commissioners had not sent over the poll-book, but Poll book must be produced to that it had been regularly offered to them in prove the fact evidence, and that they had extracted such parts didate; of it in their minutes, as applied to the particular case before them. The committee, after argument upon the point, and after deliberation, resolved, that the production of the poll was necessary; but that the omission not being but under particular circumimputable to the petitioner, it should not be stances the permitted to destroy or suspend the proceed-leased. ings (a).

of being a can-

With respect to the form of election petitions, (See ante, § 6.) and the degree of minuteness required in the allegations therein:

As to petitions of the first, second, and fourth classes of petitions (b):

The stat. 42 Geo. 3. c. 106. § 2, enacts, that App. cccxxxix. Petition must no such petition shall be proceeded upon by the state the whole house of commons, unless the same shall state all and every the several matters and things of and concerning which the petitioner or petitioners is, or are desirous of complaining, and

(a) See ante, 105, (b) For these classes, see ante, 82, 83.

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Petitions of
1st, 2d, and 4th
class.
No evidence
admissible
to matter not
contained in
petition.

to which he or they purpose to call and examine witnesses. And that no witnesses shall be called or examined on his or their behalf, either before the select committee, or before the commissioners in *Ireland*, (whose appointment will presently be explained) to any matter or thing not contained or set forth in the petition.

See ante, § 9. As to withdrawing of election petitions:

A proceeding in effect, though not in form, in the nature of those before mentioned under this head, took place in the following case:

70 Journ. 339. 342. 408. Petition, praying the discontinuance of proceedings upon an election petition. Downpatrick, 30th and 31st May, and 20th June, 1815. Mr. Ruthven, who was a petitioner against the return of Lord Glerawley, afterwards petitioned, stating his former petition, and that a committee had been appointed to try the merits of the same, and that he was not desirous of prosecuting it; and that, by and with the consent of the sitting member, he prayed the house to permit all further proceedings upon the petition to be discontinued.

Upon which a bill was passed to enable the committee to re-assemble, and to suspend the transmission of the warrants and other proceedings for the appointment of commissioners

to examine witnesses in Ireland. And the sitting member was afterwards, by such committee, Petitions of reported to the house to be duly elected.

1st. 2d. and 4th

CHAPTER III.

OF THE RECOGNIZANCES RELATING TO ELECTION PETITIONS.

SECTION 1. In what cases recognizances are required of petitioners, to what amount, and under what conditions.

SECTION 2. Of the time within which recognizances are to be entered into, and herein of enlarging such time.

SECTION 3. Of the proceedings upon entering into recognizances, and herein of the examination of the sureties.

SECTION 4. Of the omission to enter into recognizances, or to comply with the terms thereof.

SECTION 5. Scotland.

SECTION 6. Ireland.

N election petition having been presented, if it be of any of those classes wherein, as will be seen, the law requires it, recognizances must be entered into within the time, and in the manner which is about to be stated, and the terms thereof must be duly complied with.

Sect. 1:

With respect to petitions of the first, second, and third classes (a):

No proceeding to be had upon petitions of the lst, 2d, and 3d classes, unless the recognizance, required by 28 Geo. 3. c. 52. be entered into by petititioner or petitioners, or some or one of them, within fourteen days after petition presented, or further time limited by the house.

The stat. 28 Geo. 3. c. 52. § 5 (b), directs that no proceeding shall be had upon any petition by virtue of the acts of 10 Geo. 3. c. 16 (c); 11 Geo. 3. c. 42 (d); 14 Geo. 3. c. 15 (e); 25 Geo. 3. c. 84 (f), or that act, unless the person or persons subscribing the same, or some one or more of them, shall within fourteen days after it shall have been presented, or within such further time as shall be limited by the house, personally enter into a recognizance to the king, according to the form in the act (g), in the sum of £200, with two sufficient sureties in the sum of £100 each.

Conditions of recognizance.

The condition of this recognizance is, to appear before the house at the time for taking the petition into consideration, and also before the select committee, when appointed for the trial of the same, and to renew the petition in every subsequent session, until a select committee shall have been appointed for the trial, or until the petition shall have been withdrawn by permission of the house,

(a) For these classes, see ante, 82, 83.

(b) For this stat. see antc,

(e) For this stat. see ante,

(f) For this stat. see ante,

(g) For the form, see ante, 38.

⁽c) For this stat. see ante, 6.
(d) For this stat. see ante,

Another recognizance is also required in the same cases, under the stat. 53 Geo. 3. c. 71. Petitions of § 3. (a) which, in order to ensure the more class. punctual payment of costs, expenses, and fees, Norunless rewhich may become due to witnesses, officers of quired by the house, and parties, by reason of the trial of be sino encontroverted elections, directs, that no proceed-petitioner or ing shall be had on any petition by virtue of any some or one of act concerning the trial of controverted elections fourteen days and returns, unless the person or persons sub-presented, of scribing the same, or some one or more of them, further time to shall, within fourteen days after the same have been presented, or within such further time as shall be limited by the house, personally enter into a recognizance to the king according to the form (b) in the act, in the sum of £1000, with two sufficient sureties in the sum of £500 each.

1st, 2d, and 3d cognizance re-53 Geo. 3. c. 71. tered into by petitioners, or them, within after petition further time to the house.

The condition of this recognizance is for the condition of payment of all costs, expenses, and fees, which shall become due to any witness summoned in behalf of such person or persons subscribing the petition, or to any clerk or officer of the house upon the trial of the petition, or to the party appearing before the house or committee, in opposition to the petition, in case such person or persons shall fail to appear before the house,

recognizance.

⁽a) For this stat. see aute, (b) For the form, see cate,

Petitions of 1st, 2d, and 3d class. at such time or times as shall be fixed by the house for taking the same into consideration; or in case the petition shall be withdrawn by permission of the house, or in case the committee shall report to the house, that the petition appears to them to be frivolous or vexatious.

There is no objection to the same persons being sureties in both recognizances.

With respect to the sureties who may enter into these recognizances, their sufficiency is by law made the subject of a particular inquiry, in the manner which will presently appear (a). It may be observed here, that there is no objection to the same persons becoming sureties in the recognizances under both acts, if they are otherwise sufficient; the stat. 53 Geo. 3. ct 171. § 6 (b), having an express provision toothat effect.

4. & 5. As to petitions of the fourth (c) and fifth classes (d):

In petitions of 4th and 5th class. Recognizances not required. The rules and regulations whereby recognizances are required, as above stated, and certain persons are made liable to the payment of costs, are by the statutes 28 Geo. 3. c. 52. \S 32 (e), and 53 Geo. 3. c. 71. \S 14 (f) not to be

⁽a) See post, 200.
(b) For this stat. see ante,
56.

⁽c) For this class, see ante, 84.

⁽d) For this class, see ante,

⁽e) For this stat, see ante, 38.
(f) For this stat, see ante,

construed to apply to any petition presented in pursuance of the former of those acts, and re- Petitions of 4th lating solely to any question or questions respecting the right of election, or of appointing a returning officer or officers.

Section 2. Of the time within which recognizances are to be entered into, and herein of enlarging such time.

1, 2, & 3. AS to petitions of the first, second, In petitions of and third classes (a):

1st, 2d, and 3d class.

The time allowed for entering into the recognizances required is the same under both the acts; the 28 Geo. 3. c. 52. § 5 (b), and the 53 Geo. 3. c. 71. § 3 (c), alike requiring that within fourthey should be entered into within fourteen petition predays after presenting the petition, or such further time as shall be limited by the house.

Recegnizances 28 Geo. S. c. 58. and the 53 Geo.3. c. 71. to be entered into

According to the general rule of law, in the In computing computation of these fourteen days, the day on days, that of which the petition is presented would be included (d).

the fourteen presenting the petition is included.

(b) For this stat. see ante, (d) See ante, 89, (n.) 25.

⁽c) For this stat. see ante, (a) For these classes, see ante, 82, 83.

Sect. 2
Petitions of 1st, 2d, and 8d class.

class. If recognizances cannot be entered into in proper time, parties having sufficient ground, may apply to enlarge the time. Discretionary in the house, whether to grant this on matter specially stated and verified to their satisfaction, under 28 Ges. 3. c. 59. and seen matter verified on, oath under 66 Geo. 3. c. 71.

If there be any sufficient reason why, the incognizances required cannot be entered, into within the regular time, the parties may apply by petition (a) to the house, to enlarge the time for so doing. This indulgence is in their discretion, under the clauses just mentioned of hoth the statutes of the 28 and 53 Geo. 3; the former of these (b) allowing it, (if the house shall see cause,) upon matter specially stated, and verified to their satisfaction; and the latter (c) allowing it, upon matter specially stated and verified on oath to the satisfaction of the house.

As each case must stand upon its own grounds in this particular, there cannot be any general rule as to the granting or refusing this applications:

It may be of use, however, to advert to some instances, in which the question as to enlarging the time has been brought under the questions ation of the house, and to observe their decisions thereupon.

46 Journ. 125. Where petitioner was abroad on his Plymouth, 17th December, 1790.—The house being informed that John Macbride, Esq., who

to best

⁽a) See a petition for enlarging the time for entering into recognizances. App. eccexevi.

⁽b) For this stat. see ante, 25.

⁽c) For this stat. see ante, 55.

had petitioned on the 3d December against the election and return, was abroad, commanding Petitions of one of his majesty's ships of war, and that it was class. uncertain when he would return: the stat. 28 majesty's ser-Geo. 3. c. 52. § 5, was read, and it was ordered, ing into re-66 that the time allowed for John Macbride, Esq. cognizance was enlarged. to enter into the said recognizance should be enlarged until the 16th January then next (a)."

1st, 2d, and 3d majesty's serfor his enter-

Seaford, 23d December, 1790. - The agent for 46 Journ. 136. Sir Godfrey Webster and Mr. Tarleton, who had miners adpetitioned against the election and return, stated mination of by petition to the house, that the time for the sureues, un petitioners entering into the recognizance would which the time would exexpire on the following day; but that the exmainers, who had entered into the examination of the sureties, had adjourned it till that day. The time was enlarged till the 29th December.

sureties, till

3111 Shaftesbury, 29th December, 1790.—The pe- 46 Journ. 137. tition of Mr. Mortimer against the return, was nizance was presented 10th December.—The speaker hav-count of the ing informed the house that the recognizances ness, the time had not been entered into, but that this was occastoned by his own indisposition, the time was ehlarged for thirty days.

Where recogdelayed on acspeaker's illwas enlarged.

(a) The time was after- act of parliament passed for wards limited to thirty days that purpose, viz. the stat. after Captain Machride's re- 31 Geo. 3. c. 3.—See also turn to this country, by an the cases in Sect. 5 and 6.

Sect. 2. Petitions of 1st, 2d, and 3d class.

In the above cases wherein the time was enlarged, there were no laches on the part of the petitioners; but where there has been negligence on the part of the petitioner, whether it has arisen from ignorance of the law or not, the house has refused to enlarge it; as in instances where there was a delay by the petitioner, in instructing his agents, or where he had continued so long abroad, (not being there in the service of his country,) as to make it impossible for him to give the proper notice to the sitting members of the intended sureties.

58 Journ. 110. Where petitioner delayed hisinstructions as to make it to give the the house refused to enlarge the time.

Tregony, 21st Dec. 1802 (a).—The agents for Mr. Williams, who had petitioned against the to his agent, so return of the Marquis of Blandford and Sir too late to him Charles Cockerell, petitioned, alleging that they proper notice; had received their instructions respecting the recognizance on the 18th, that they had made every effort in their power respecting the business (the particulars of which they stated); and also, that the examiners had deferred the examination of the sureties for want of sufficient notice, and praying that the leave for entering into recognizance might be enlarged: grounds of this application were considered as insufficient; and a motion for enlarging the time for entering into recognizance was negatived.

(a) See also the case of Drogheda, 10 Dec. 1802, post. 16.

Seaford, 21st Dec. 1802.—Mr. Concannon petitioned the house in like manner, stating that Petitions of he had been abroad, and that on being informed class. that it was necessary for him to enter into a recognizance, he had made efforts to return in time, but that he had been detained by contrary winds; and that he had only arrived in proper notice, town on the night of the 20th, and that he of which he was ignorant that a notice of two days was re- had been igquired to be given to the sitting members of the house refused sureties which were to be offered; and praying, the time. under these circumstances, for further time: This application was refused.

1st, 2d, and 3d 58 Journ. 110. Where petitioner staved so long abroad as to prevent his giving the of the necessity alleged that he norant; the to enlarge

Milborne Port, 16th January, 1807.—Mr. Da- 62 Journ. 68. Where petivison, the petitioner against the return of Lord tioner omitted Paget and Mr. Leycester, (the consideration of the notice, whose petition was appointed for the 10th of of the law, the March), petitioned, stating that he had attended to enlarge the the day before his latter petition, with his sureties in the committee room, appointed for taking and examining them, with the intention of perfecting the same, but that he was not permitted so to do, because the notice required had not been given to the sitting members, or their agents; that the omission of such notice was occasioned by the petitioner not being by himself or his agent acquainted with the standing order of the house which makes such notice necessary, and praying

from ignorance house refused

Petitions of 1st, 2d, and 3d class, that the time for entering into recognizance might be enlarged. The matter of this petition was verified by a member present. A motion that the time should be enlarged, was negatived.

62 Journ. 759. Same point. Lancaster, 22d July, 1807.—A similar application was made under circumstances of the same nature, and the like motion was negatived.

Under neither of the above statutes can the time for entering into recognizances be enlarged more than once, or for any number of days exceeding thirty, a restriction to this effect being respectively made by the two clauses last mentioned (a).

Lastrady,

Where time for entering into recognizances is enlarged, the consideration of the petition may be postponed, but no petition is to be taken into consideration until recognizances entered into and received by the speaker.

If the house shall come to the determination, that sufficient grounds have been shewn to induce them to enlarge the time for entering into recognizances, each of the same clauses directs that the order for taking the petition into consideration, is, if necessary, to be postponed, so that no petition be taken into consideration, till the recognizances shall have been entered into, and received by the speaker.

It need hardly be mentioned, that if parties are willing to enter into recognizances before

(a) See ante, 194.

the expiration of the fourteen days, the consideration of the petition may be proportionably Petitions of accelerated.

1st, 2d, and 3d class.

Colchester, 16th February, 1789.—The peti- 44 Journ, 116, tion of Mr. Jackson was presented, and ordered Petitioner conto be taken into consideration, on the 24th of senting loguiter into recogni-February, being the day fixed for the considera- zance before tion of Mr. Tierney's petition against the same consideration return, presented February the 7th: Notice was may be adtaken, that the statute allowed fourteen days for the recognizance to be entered into: but the bouse being informed, that the petitioner would undertake to enter into his recognizance before the said 24th day of February, the order for the consideration of the petitions continued to stand for that day.

the time, the of his petition

Great Grimsby, 6th of December, 1802. - 58 Journ 56. There was a similar proceeding, as to the petition of Mr. Sewell.

SECTION 3. Of proceedings upon entering into recognizances, and herein of the examination of the sureties.

4, 2, and 3. As to petitions of the first, second, and third classes (a):

(a) For these classes, see ante, 82, 83.

Sect. 2. Petitions of 1st, 2d, and 3d class.

Recognizances under 28 Geo. 3. c. 52, and 53 Geo. 3. c. 71. to be entered into before the speaker.

The recognizances, both under the stat. 28 Geo. 3. c. 52. and the 53 Geo. 3. c. 71. are to be entered into by petitioners and their sureties before the speaker. By the former act, § 6 (a), he is authorized and empowered to take the recognizances thereby required; and by the latter, § 5 (b), the recognizance under that act is to be entered into, in the manner enacted in the former act.

The names of intended sureties are to be delivered to the clerk of the house of commons eight days before entering into recognizances.

With a view to ascertaining the sufficiency of the sureties proposed, the petitioner or petitioners, or his or their agents, must, by the stat. 53 Geo. S. c. 71. § 4. and 6 (c), eight days at least before entering into such recognizances, deliver in writing to the clerk of the house of commons the names of the sureties proposed; which names are to be entered in a book to be kept by such clerk in his office, open to the inspection of all parties concerned.

Speaker to judge of the sufficiency of sureties, in recognizances under the 28 Geo. 3. c. 52. and 53 Geo. 3. c. 71. on the report of two (of certain) persons, to

By the stat. 28 Geo. 3. c. 52. § 6. the sufficiency of the sureties, in recognizances under that act, is to be allowed and judged of by the speaker, on the report of two persons to be appointed by him to examine the same; of which two persons the clerk or clerk assistant of the

⁽a) For this stat. see ante, 26. (b) For this stat. see ante, 56.

⁽c) See ib.

house is always to be one; and either a master in chancery, a clerk in the court of king's bench, Petitions of a prothonotary in the court of common pleas, or 1st, 2d, and 3d class. a clerk in the court of exchequer, is to be the be appointed other (such other not being a member of the house of commons.) The two persons thus appointed, being thereby authorized and required to examine the same, and to report their judgment thereupon; and being entitled for so doing Examiners on to such fees as shall from time to time be fixed tain fees. by any resolution of the house (a). This pro-

(a) 2d July, 1813,—A committee which had been appointed to consider of the fees payable to examiners of election recognizances and bills of costs; and to whom the reports made on the 11th February, 1789, and the 20th May, 1791, from committees appointed to consider of the act 28 Geo. 3. c. 52; and also an act of the then session (53 Geo. 3. c. 71.), were referred, reported that they had examined the matters to them referred, and had come to a resolution thereupon; and had also agreed to a table of fees, and which it was resolved by the house should be demanded and taken. -The table of fees to be demanded and taken by the examiners, and other persons, for their attendance and trouble respecting such recognizances, and the taxation of all costs, fees, and expenses, under the authority of the said acts (and which it was resolved by the house should be demanded and taken), is as follows:

To each of the said examiners, for his pains and trouble respecting the examination of the sufficiency of the sureties in any recognizances, or respecting the taxation of any bill of costs, expenses, or fees, upon which an order of reference shall have been made by Mr. Speaker to such examiners, for the first day of attendance, the sum of three guineas

For every subsequent attendance the sum of two guineas

Sect. 8.
Petitions of 1st, 2d, and 3d class.

vision also, by the effect of the 53 Geo. 3. e. 71. § 5 (a), is adopted in cases of recognizances under that act, that clause directing that the sufficiency of sureties, in recognizances under that act, shall be allowed and judged of, in the manner, and under the regulations enacted under the former act, with respect to the recognizances therein.

Examiners appointed by the speaker. In compliance with the above provision, examiners of the sureties are appointed in each instance by the speaker, under his hand (b) with whom it rests, to make inquiry, with respect to sureties proposed for recognizances under either act.

It becomes their duty, in conformity to a reso-

Ann. ccc. ..

í-

To the speaker's secretary, for his pains and trouble respecting every such recognizance, and all matters relating thereto, the sum of twenty shillings

To the speaker's secretary, for his pains and trouble respecting the taxation of every such bill, the sum of one pound six shillings and eightpence

To the clerk, who shall be appointed to attend the said examiners, for his pains and trouble on every attendance, the sum of two guineas

2

Memorandum. That if orders of reference are made upon two or more bills of costs, fees, or expenses arising upon the same petition, each day of meeting shall be considered as one attendance. 68 Journ. 634.

(a) For this stat. see ante (b) For a form of such appointment, see App. coccesii.

lution of the house of commons of the 11th Feb. 1789 (a), by virtue of the speaker's order, and Petitions of upon application of the petitioner's agent to the clerk or clerk assistant of the house, for a day They fix a day and an hour for examination of the sufficiency the examining of the sureties, which, by the same order, and of the sureties. also by that of 2d July, 1813 (b), is to take place This examinain one of the committee-rooms belonging to the one of the comhouse of commons: such examiners being re- belonging to quired by the latter resolution to give due notice in writing, to be hung up in the lobby of the house of commons, of the time and place of such intended examination.

1st, 2d, and 3d and hour for

the sufficiency

Sect. S.

tion to be in mittee-rooms

in core present to reconstances under

(a) For this resolution, see

App. ccccxciii.

(b) 2d July, 1813.—It was reported by a committee, to whom the reports of the 11th February, 1789, and the 20th May, 1791, from committees appointed to consider the act of the 28 Geo. 3; and also the act 53 Geo. 3. c. 71. had been referred (interalia), that they had come to a resolution thereupon, viz.

Resolved, "That it is the opinion of this committee, that for the due execution of an act, &c. (28 Geo. 3. c. 52), and of an act, &c. (53 Geo. 3. c. 71), so far as the same respect the recognizances thereby required to be entered into by any person having presented a petition to this house, complaining of an undue election or return, or of the insufficiency of a return, it is expedient that the examiners of sureties to be appointed by virtue of the said acts, should attend for the purpose of examining the sufficiency of any surety or sureties to be named in such recognizance, in one of the committee-rooms belonging to this house, at such time or times within the time limited by the said acts, as shall be appointed by such examiners; and that such examiners do give due notice in writing, to be hung up in the lobby of the house of commons, of the time and place of such intended examination." 68 Journ. 634.

Sect. 3. Petitions of 1st, 2d, and 3d class. Petitioner to give notice of time and place of examination, and of the names and of sureties to sitting member or members. &c.

The examiners having made this appointment, the petitioner is, in conformity to the same resolution of the house, to give notice (a) of the time and place of this examination, together with the names, additions, and places of abode of the sureties, to the sitting member or members, places of abode whose election or return is complained of by the petition, or their known agent or agents, and to every other person or persons to whom the speaker shall have given notice to attend at the time when the petition is ordered to be taken into consideration, or their known agent or agents.

Two whole days to intervene between days of notice and of examination.

This notice is, according to the practice of the house, to be so given, as that two whole days may intervene between the day of serving the notice and the day of the examination.

Where petitioner cannot find and serve sitting member, or his agent, with notice, and

There having been in some instances a difficulty in serving this notice (b), it was provided by a resolution of the house of commons of the 16th July, 1807 (c), that if the petitioner shall not have been

(a) For a form of this notice, see App. ccccxciv.

(b) See the case of Dum-

fries, post, 213.

came to a resolution, which was reported and agreed to by the house, viz.

35 6531

Resolved, "That so far as the said resolution respects the notice required to be given by the petitioner to the sitting member or mem-

⁽c) 16th July, 1807.—The resolution of the 11th Feb. 1789, ante, 203, having been referred to a committee, they

able to find and serve sitting member, or his known agent or agents, and if he shall thereupon have Petitions of obtained an order from the house enlarging the class. time for entering into recognizance, it shall be shall have obsufficient for the petitioner to give such notice largement of in writing, seven days at least previous to such entering into examination, to the clerk of the house of com- he may give nomons, who is to enter the same in a book to be seven days bekept for that purpose, which is to be open for tion to clerk of the inspection of all parties concerned.

At the time appointed for the examination of cerned. the sureties, affidavits are produced to the sureties, or made by them of the service of the proper davits to be notices (a), and of the sureties being worth the made of the sum required for the recognizance (b); and ob- and of sureties jections which may be made to their sufficiency the sum re-

Sect. 3. let, 2d, and 8d tained an enthe time for recognizance, tice in writing fore examinathe house, who is to enter it in a book, for inspection of At the exa-mination, affiproduced or proper notices,

being worth

quired, &c.

bers, or their known agent or agents, of the time and place of the intended examination of the surety or sureties to be named in any recognizance, and of the names, additions, and places of abode of such sureties, if the petitioner shall not have been able to find and serve the sitting member, or his known agent or agents; and if he shall thereupon have obtained an order from the house enlarging the time for his entering into his recognizance. it shall be sufficient for the.

petitioner to give the said notice in writing, seven days at least previous to such examination, to the clerk of the house of commons, who shall enter the same in a book to be kept for that purpose, which shall be open to the inspection of all persons concerned." 62 Journ. 721.

(a) For a form of such affidavits, see App. ccccxciv.

(b) For a form of an affidevit of justification upon entering into recognizance, see App. ccccxcv.

in the contraction of a military

Petitions of 1st, 2d, and 3d class. are brought forward and considered. And upon the result of this examination the report is made by the examiners to the speaker.

Where parties who are to enter into recognizance. under the 28 Geo. 3. c. 52. or the 53 Geo. 3. c. 71. or sureties, reside above forty miles from . London, recognizance may be entered into before a justice: and is to to be by him certified and transmitted to the speaker.

A provision has been made for the convenience of parties who reside at a distance from London, by the stat. 28 Geo. 3. c. 52. § 7 (a), which, by reason of the 53 Geo. 3. c. 71 & 5/(b). will apply to recognizances under either act. The provision alluded to is, that where parties who are to enter into recognizances, or their sureties, or any of them, reside above forty miles from London, they may respectively enter into recognizances before a justice of the peace (c), (any justice being thereby authorized and empowered to take the same) and such necognizance being duly certified under the hand of such justice, and transmitted to the speaker, is to have the same force and effect as if entered into before him.

Persons who are to examine sufficiency of sureties may

A die

The above stat. 28 Geo. 3. c. 52. § 7, empowers the parsons so appointed to examine the sufficiency of the sureties, to receive in such examine.

(a) For this stat. see ante,

(b) For this stat. see ante, 56.

(c) For a form of an affi-

davit of the acknowledgment of a recognizance in either case, see App. ccccxcv. Care should be taken that there is a proper affidavit stamp. mination, as evidence, affidavits relating thereto. sworn before a master in chancery, or a justice Petitions of of the peace; either of whom has authority class. thereby, to administer such oath, and is autho- receive affidarized and required to certify such affidavit under berein. his hand.

And by the stat. 53 Geo. 3. c. 71. \$11 (a), the Examiners persons so appointed to examine the sufficiency davits relative of the sureties in recognizances, under either the recognizances, 28 Geo. 3. c. 52. or that act, are empowered to and administration of the continuous take any affidavit relative to such sureties, or to affidavits. the entering into recognizances, and to administer the oath for taking such affidavit.

And by the same clause persons convicted of Swearing wilfully false swearing in any such affidavits, affidavits, perere made guilty of perjury, and liable to its pebaltiks.

Same of the source of the empowers

SHEPION 4. Of the omission to enter into recognizancesi is 29 ilm on to comply with the terms thereof.

1, 2, 3. As to petitions of the first, second, and third classes (b).

(a) For this stat. see ante, (b) For these classes, see ante, \$2, 83.

Sect. 4. Petitions of 1st, 2d, and 3d class. If within the 14 days recognizance under 28 Geo. 3 c. 52, be not entered into, and received by speaker, he is to report it to the house. and the order for taking the petition into consideration is to be discharged, unless the house enlarge the time. So with respect to recognizances under the 53 Geo. 3. c. 71. (ante, 194) But in these ter brought bein order to the the time must be on oath.

By the stat. 28 Geo. 3. c. 52. § 5. (a), if, at the expiration of the fourteen days before-mentioned, the recognizance under that act shall not have been entered into, or shall not have been received by the speaker, he is to report the same to the house (b); whereupon the order for taking the petition into consideration is to be discharged, unless the house shall see cause to enlarge the time for entering into such recognizance, as before stated.

The stat. 53 Geo. 3. c. 71. § 3. (c) has a corlarge the time. So with respect to recognizances under the 53 Geo. 3. c. 71. § 3. (c) has a corlarge the time. The stat. 53 Geo. 3. c. 71. § 3. (c) has a corlarge the time and the second provision with respect to the recognizance under that act, the two clauses being similar, with the exception only before alluded to, that any matter brought before the house, with a view to obtain an enlargement of the time for entering into the recognizance under that act, must be upon oath.

These omissions to enter into recognizances have very frequently occurred, whereupon the speaker reporting the same to the house, if an order has been made for taking the petition into consideration, such order has been discharged; and if no such order has been made, the pro-

⁽a) For this stat. see ante, instance as to Mr. Williams's 25, 26. petition.

⁽b) St. Alban's, 24th Feb. (c) For this stat. see ante, 1809. 64 Journ. 88. See an 55, 56.

ceedings have died away as a matter of course. Of which the following cases are instances:

Sect. 4. Petitions of 1st, 2d, and 3d class.

Great Grimshy, 22d December, 1812.—The speaker acquainted the house that the electors of speaker who had petitioned the house on the 7th, complaining of an undue election and return, had not entered into a recognizance in respect of petition into such petition, according to the directions of the act 28 Geo. 3. c. 52. The order for taking the petition into consideration was discharged (a).

68 Journ, 106. On report that recognisance not entered into, order for taking consideration discharged. (And see Journ. passiss.)

Grampound, 8th Nov. 1814.—The speaker ac- 70 Journ. 8. quainted the house, that Mr. Montague, who had petitioned the house on the 28th July then last, complaining of an undue election and return, had not entered into a recognizance in respect of such petition, according to the directions of the act 28 Geo. 3. c. 52, nor according to the directions of the act 53 Geo. 3. c. 71. Upon which the petition fell to the ground as a matter of course.— So with respect to another petition relating to the same election.

Same point.

It is to be observed, that the language of these cannot relieve statutes is imperative, and that if the time for parties omitting to enter entering into recognizances be suffered to elapse into recogwithout a compliance with the law in this particular, the house has no authority, whereunder

nizances.

(a) See also the cases of Youghall, post, 220, and Mayo, post, 221.

Petitions of 1st, 2d, and 3d class.

to relieve the parties from the consequences of their omission.

- 2. With respect to the omission to comply with the terms of the recognizances:
- 1. 2. 3. As to petitions of the first, second, and third classes (a):

Petitioners having entered into recognizance not appearing for the purpose of proceeding to appoint select committee;

or, not appearing before committee to prosecute petition;

or, neglecting to renew petition in every new session untilcommittee appointed, or until petition withdrawn;

have made default in recog-nizance, under

By the stat. 28 Geo. 3. c. 52. $\S 9(b)$. If the petitioner or petitioners, having entered into the recognizance under that act, do not appear in the proper time personally, or by his or their counsel or agents, for the purpose of proceeding to the appointment of the select committee: or if the select committee, appointed for the trial of the petition, shall inform the house that such person or persons did not appear in like manner before the committee to prosecute the petition; or, if such person or persons shall neglect to renew (c) their petition within four sitting days after the day of the commencement of every session of the same parliament, subsequent to that in which the petition was presented, and until a select committee shall have been to be holden to appointed for the trial of the same, or until it shall have been withdrawn by permission of the house: nizance, under 28 Geo. 3. c. 52. in every such case, such person or persons shall be held to have made default in such recognizance.

- (a) For these classes, see ante, 82, 83.
- (b) For this stat. see aute, 27.
- (c) See ante, 148, 149.

The same clause directs the speaker to certify such recognizance into the court of exchequer, Petitions of and that such person or persons have made de- class. fault therein; and such certificate is thereby to Whereupon be conclusive evidence of such default, and the certify into recognizance so certified, is to have the same effect as if estreated from a court of law.

The same clause also further provides, that and recognisuch recognizance and certificate shall be deli- tified, to have vered by the clerk or clerk-assistant of the house, treated from into the hands of the lord chief baron, or of one Recognizance of the barons of the exchequer, or of such officer and certificate to be delivered of that court as shall be appointed by the court by the clerk, to receive the same.

By the stat. 53 Geo. 3. c. 71, § 12 (a), if the Petitioner not petitioner or petitioners, having entered into the within seven recognizance under that act, shall neglect, or re- mand, the sum fuse, for seven days after demand, to pay to any witness who shall have been summoned on his be due to him, or their behalf, before the house or the select lings a day committee, on the trial of the petition, the sum during which certified (under the act) by the speaker to be payment; due to such witness, together with the further sum of forty shillings a day for every day during which he or they shall delay to satisfy the same;

1st, 2d, and 3d speaker to exchequer recognizance and default. Certificate to be conclusive evidence of default: zance so cereffect as if es-&c. into the hands of certain persons in the court of ex-

days after decertified by the speaker to and forty shilfor every day he shall delay

chequer.

⁽a) For this stat. see ante, 59.

Petitions of 1st, 2d, and 3d class. or, not paying any officer of the house, or party appearing in opposition to petition, within six months after demand. the sum certified by the speaker to be due, and the same being proved to the satisfaction of the speaker, by affidavit, in chancery, to be holden to have made decognizance.

Or, if such petitioner or petitioners shall neglect or refuse, for the space of six months after demand, to pay to any officer of the house, or to any party appearing in opposition to the petition, the sum certified by the speaker in pursuance of the 28 Geo. 3. c. 52. or of that act, to be due to such officer or party for their fees, costs, or expenses; and that such neglect or refusal shall be proved to the satisfaction of the speaker by affidavit sworn before a master in chancery, (such master being thereby authorized to administer the oath, and required to certify before a master such affidavit under his hand;) in every such case such person or persons shall be held to have made fault in his re. default in the recognizance.

Whereupon such steps to be taken as under recognisance of 28 Geo. S. c. 52,

And in the case of such default, the same clause directs (in terms almost verbatim the same) the steps to be taken which have been pointed out with respect to recognizances under the 28 Geo. 3. c. 52 (a).

SECTION 5. Scotland.

There are no distinctions in the law with respect to recognizances relating to election pe-

(a) See ante, 211.

titions, which make it necessary to add any observations regarding elections for places in Petitions of Scotland.

1st, 2d, and 3d

As to the time within which recognizances See ante, sec. 3. are to be entered into, and as to enlarging such time:

As to petitions of the first, second, and third classes (a):

The following case occurred before the resolution of the 16th July, 1807, before mentioned (b):

Dumfries, 9th December, 1790.—Sir James 46 Journ. 46. Johnstone, who had petitioned against the electioner was untion and return of Mr. Millar, presented a pe- sitting member tition, stating, that Mr. Millar had not taken entering into his seat; that as the petitioner was informed he the house en was then in Scotland or Ireland, and that he not having any place of residence or known agent in London, the petitioner was not able to give him the due notice within the time limited by the act for entering into the recognizance, and praying, that the leaving such notice with the clerk of the house might be deemed a good service, or for other relief. A motion

Where petiable to serve with notice of recognizance, larged the time.

⁽a) For these classes, see (b) See ante, 201. ante, 82, 83.

Sect. 5.
Petitions of
1st, 2d, and 3d
class.

to that effect with respect to the service of the notice was negatived, (in conformity to the then practice;) but the time for entering into the recognizance was enlarged for thirteen days.

SECTION 6. Ireland.

App. ecciv.

By the operation of the fourth article of union, together with that of the stat. 42 Geo. 3. c. 106. § 1. the rules with respect to recognizances relating to election petitions, in respect of elections for places in *Ireland*, are the same as in the cases of other elections; and the few following observations being kept in view, they may be so taken:

As to the time within which recognizances are to be entered into, and as to enlarging such time:

Petitions of As to petitions of the first, second, third, and 1st, 2d, 3d, and fourth classes (a):

App. coclerative. The stat. 47 Geo. 3. c. 14. § 8. in contemplation, that it might happen that the recognizance under the 28 Geo. 3. c. 52., though duly entered into, might not come to the speaker's

(a) For these classes, see ante, 82, 83.

hands until after some delay; enacted, that the order for taking into consideration any petition Petitions of relative to the trial of any controverted election, 4th class. or return, or right of election (a) in Ireland, shall not be discharged until the expiration of twentyeight days after the petition shall have been presented to the house, by reason that the recognizance required by the 28 Geo. 3. c. 52. § 5, was not received by the speaker under the provisions of that act; and that in case such recognizance shall not be received by the speaker before the expiration of such twenty-eight days. he is to report the same to the house; whereupon the house is to proceed as they would before have proceeded in case the recognizance had not been received by the speaker within the fourteen days.

1st, 2d, 3d, and Order for taking petition into consideration not to be discharged, because recognizance under 28 Geo. 3. not received by speaker, until after twentyeight days.

(Eee ante, 208.)

This clause provides, that nothing therein is to be construed to alter or enlarge the time for entering into the recognizance under the 28 Geo. 3. c. 52 (b).

(a) By the 28 Geo. 3. c. 52. § 32. the rules and regulations in that act, by which certain persons are directed to enter into recognizances, are not to apply to petitions presented in pursuance of that act, and relating solely to questions respecting the right

of election, or of appointing a returning officer. But the above act seems to contemplate a recognizance in such

(b) Galway, 2d Feb. 1813. The speaker acquainted the house, that in the case of the petition of John Joyce, and Petitions of 1st, 2d, 3d, and 4th class. From the greater distance and increased difficulty of serving the previous notice, several cases have occurred in which the house has been applied to, to enlarge the time for entering into the recognizance.

58 Journ. 80. Where petitioner was not able to serve the sitting member with notice of entering into the recognizance, the house enlarged the time. (See also post, 218.)

Drogheda, 10th December, 1802.—Mr. Ogle, who was a petitioner against the election and return of Mr. Hardman, petitioned the house, stating, that the sitting member not being in England, nor having any known agent there, it had not been in the power of the petitioner to give him the two days notice of his intention to enter into recognizance; stating that he was prepared with sureties, and praying that the time might be enlarged. The precedents in the cases of Dumfries, 9th December, 1790; Plymouth, 17th December, 1790; and Seaford, 23d December, 1790, were referred to, and the matter of the petition being verified by a member pre-

Ante, 213. Ante, 194. Ante, 195.

others, who had petitioned the house on the 8th Dec., then last, complaining of an undue election and return; the examiners by him appointed to examine the sureties named in the recognizance, had made a special report to him, that on reference to the act (47 Geo. 3. c. 14. § 8.) enlarging the time before the speaker should make a report to the house,

of his not having received a recognizance in the case of an Irish election petition, it appeared doubtful to them whether the time thereby allowed extended to the examination of the sufficiency of the sureties; but that, in his opinion, the recognizance had been duly entered into, according to the provisions of the act referred to in such special report. 68 Journ. 109.

sent, the time was enlarged for twenty-one days (a). The like order was also made in re- Petitions of spect of the petition of certain freemen and free- 4th class. holders.—This case has been since followed by (See ante, 204.) the resolution of the 16th July, 1807.

1st, 2d, 3d, and

Newry, 16th January, 1807.—A petition was 62 Journ, 68. presented, stating, that certain electors who had petitioned the house against the election and renot been transturn, by reason of the distance from London, mitted in time to the house, had not been able to have the recognizance by reason of the distance transmitted to the house in sufficient time, and from London, praying that further time might be granted for larged the time. that purpose. The matter of the petition was verified, to the satisfaction of the house, by a member present. There was a debate upon the question, which was adjourned to the 20th January, when the time for entering into recognizance was enlarged till the 6th of February.

(n) On the 3d of February Mr. Ógle, the petitioning can-didate, not having entered into his recognizances, and the speaker acquainting the house therewith, the order of the day for taking his petition into consideration was discharged. And the speaker also acquainting the house, that one of the electors who had petitioned, had, together with two sureties, entered into a recognizance in Ireland in respect of such petition, which recognizance had been left with the speaker:

but that the validity of such sureties had not, for want of due notice to the sitting member, or his agent, been examined and approved of in the usual manner, the stat. 28 Geo. 3. c. 52, and the resolution 11th February, 1789, having been read, a debate arose upon the motion for discharging the order of the day for taking the petition into consideration on the 1st March; which was adjourned February 7th, when the order was discharged. 58 Journ. 118, 129,

Sect. 6. Petitions of 4th class. 62 Journ, 63. Where the affidavit of the sufficiency of . the sureties accompanying the recognizance was not upon a stamp. the house allowed four days more for the sureties to enter into recognizante.

Londonderry, 12th January, 1807.—The house being informed that the recognizance entered 1st, 2d, 3d, and into for prosecuting the petition of the Hon. William Ponsonby had been received; but that the affidavit transmitted therewith of the sufficiency of the sureties appeared to be on paper not stamped, so that the examiners could not receive it in evidence, and that the time for entering into recognizance expired on that day. The sureties were ordered to enter recognizance on the Friday then next, the 16th.

68 Journ. 60. Where petitioner was unable to serve with notice of entering into recognizance, the house enlarged the time. (And see ante, 204.)

Galway, 14th December, 1812; and 2d and 8th February, 1813.—Mr. Blake, who had pesitting member titioned the house on the 4th December against the return of the Hon. Frederick Ponsonby, presented a petition on the 14th, stating, that he had delivered in to the clerk of the recognizances the names, additions, and places of abode of his intended sureties; that the examination of the sureties was appointed, but that Mr. Ponsonby not having taken his seat, nor having any known agent in London, he had made diligent inquiry after him, in order to his being served with the proper notice, but that he apprehended he should not be able to give the necessary notice; adding that he and his sureties were in all other respects ready to enter into the recognizance; and praying that the house would en-

4.2

large the time for entering into such recognizance. The house enlarged the time till the 17th Petitions of January (a).

1st, 2d, 3d, and 4th class.

Downpatrick, 10th April, 1815.—A petition 70 Journ. 200. was presented from the solicitor to Mr. Ruthven, Where, on a count of the stating, that on the 18th March a petition had distance from been lodged in the crown-office in Ireland, against the return of Lord Glerawley; that it solicitor's dihad been presented on the 3d April, and had entering into been ordered to be taken into consideration so as for it to on the 20th April, and afterwards on the 4th in time, the May; that on the 4th April he had delivered the time, at the office of the clerk of the house, the names and additions of the sureties who proposed to enter into the recognizances, and had obtained an appointment from the examiners for examining the sufficiency of the sureties for the 17th April; that he had transmitted by the mail a copy of the appointment of the examiners. and of their appointment of the 17th April, to Mr. Ruthven, with directions to serve the same on Lord Glerawley, and instructions for completing the recognizance; and that he had left

Where, on ac-London, the petitioner could not receive his rections as to recognizance, be completed house enlarged

(a) County of Mayo, 30th March, 1814.—Upon an application to the house, the agent for the petitioners was examined upon oath in relation to the matter of the petition, and upon such exa-

mination the time for entering into the recognizances was enlarged till the 18th of April. But the particular circumstances do not appear. 69 Journ. 172, 195.

Sect. 6.
Petitions of
Jat, 2d, 3d, and
4th class.

duplicates of the above copies at Lord Glerawley's residence in London, with a request that they might be forwarded; that from the time requisite (Mr. Ruthven residing in the north of Ireland), the recognizances could not be perfected before the 13th, and could not reach London till the 17th, which was the day appointed by the examiners; and praying, under all the circumstances, that the time might be enlarged till the 11th May, which, after the examination of Mr. Hacket upon oath, was ordered.

See ante, sec. 4. As to the omission to enter into recognizances, or to comply with the directions thereof:

As to the petitions of the *first*, second, and third (a) classes (b):

68 Journ. 123.
On report of speaker, that recognizance not entered into, order for taking petition into consideration discharged.

Youghall, 8th Feb., 1813.—The speaker acquainted the house, that the Hon. William Francis Spencer Ponsonby, who petitioned the house on the 22d December, complaining of an undue election and return, had not entered into a recognizance in respect of such petition, according to the directions of the act 28 Geo. 3. c. 52. The order for taking the petition into consideration was discharged.

⁽a) Quære, as to petitions (b) For these classes, see of the fourth class, see ante, ante, 82, 83.
215.

County of Mayo, 21st April, 1814.—The speaker acquainted the house, that the peti-Petitions of tioners had not entered into a recognizance in lst, 2d, and 3d class. respect of their petition, according to the direc. 69 Journ. 195. tions of the act of 28 Geo. 3. c. 52, nor into a Same point. recognizance in respect of their petition, according to the directions of the act 53 Geo. 3. c. 71. Whereupon the order for taking the petition into consideration was discharged.

CHAPTER IV.

SECTION 1. Of the exchange of lists of objected votes, and when such lists are to be exchanged.

SECTION 2. Of the degree of minuteness required in lists of objected votes.

SECTION 3. Of the non-insertion of objected votes in the lists; and of the insertion of frivolous objections.

SECTION 4. Scotland.

SECTION 5. Ireland.

A S to the exchange of lists of objected votes:

An election petition having been presented to the house, and the recognizances entered into

in those cases wherein the law requires them. it becomes necessary to advert to some preparatory steps which belong to the approach of the trial.

Petitions of 1st, 2d, and 3d

With respect to petitions of the first, second, and third classes (a):

It is a matter of great convenience to the parties, and tends in no small degree to facilitate the proceedings upon the trial of a controverted election, that where the subject of the petition regards the validity or invalidity of votes, there should be a communication from the one side to the other, as to the votes which are intended to be disputed, and as to the objections thereby which are proposed to be made.

Lists of objected votes. formerly required in particular cases; afterwards in cases of petitions as to county elections; now, in all cases.

The advantages of this interchange of intended objections appears to have been long seen, and more or less acted upon by the house. Lists of objected votes were at first required in particular cases (b): The exchange of them was afterwards, by a resolution of the house, made a

ante, 82, 83.

(b) 29th November, 1699. The election committee made some order to that effect.—The entry in the

(a) For these classes, see concerning certain orders, lately made by the committee of privileges and elections, relating to the giving of lists of persons excepted to, on either side, in cases Journal runs thus: A de- touching elections depend-bate arising in the house, ing before them; and the necessary proceeding in cases of petitions in respect of county elections; and, recently (by Petitions of act of parliament), in all cases of controverted class. elections whatever.

Sect. 1. 1st, 2d, and 3d

The resolution of the house, alluded to (a), is that which required that petitioners, in all cases

house considering the inconveniences that have arisen thereby, ordered, "That the said orders should be discharged; and that it should be an instruction to the said committee, That they should make no such orders for the future." 13 Journ. 9.

Mr. Luders (2 Lud. 561.) observes, that "this entry leaves us at a loss to discover what the inconveniences complained of were;" perhaps, they arose more from the practice of the court, than from the regulation itself.

Rutlandshire, Jan. 1710-11. -The house, of its own accord, required lists from the sitting member of such votes as he intended to object to, or to have added to his own. This seems to have been " moved, and acquiesced in as the sense of the house." But these lists were delivered to the house, not to the other party. Afterwards the speaker desired to know the pleasure of the house, whether the clerk might give copies of those lists to the petitioner, which the house acquiesced in, that he might do. 16 Journ. 461.

Harwich, 8th June, 1714. —The house made an order for the exchange of lists, (in a borough election) and insisted upon a bonâ fide obedience to it. 17 Journ. 672.

Yorkshire, 1735 . The house made an order for the exchange of lists of voters intended to be objected to, as well on the part of the petitioners, as on that of the sitting members. 22 Journ. 501.

(a) This resolution was first made in the beginning of the session, which commenced, January, 1735-6, having been occasioned by the petition in the above case of Yorkshire, and has been passed since that time in its present form, a few of the original words only being omitted, by reason of the substitution of the trial by select committees, for that at the bar of the house, or before the committee of privileges and elections.

Petitions of 1st, 2d, and 3d class. of controverted elections for counties (a), in *England* and *Wales*, by themselves, or their agents, within a convenient time to be appointed by the house, to deliver to the sitting members or their agents, lists of the persons intended by the petitioners to be objected to, who voted for the sitting members, and *vice versa*, on the other side.

This resolution (now, in effect, superseded) has become the foundation of the stat. 53 Geo. 3. c. 71. § 1 (b), which has nearly, though not exactly, adopted its provisions: Upon this statute the law now depends, and it is applicable in respect of petitions as to elections, for all places in *England* and *Wales*.

As to when such lists are to be exchanged:

All parties complaining of, or defending controverted elections or returns by themselves or This act directs, that in all cases of controverted elections, or returns, all the parties complaining of, or defending the same, are by themselves, or their agents, to deliver in to the clerk

(a) In the case of the borough of Southwark, 1785.

—Where the number of voters is very great, it was proposed, by the petitioner's counsel, in opening the case, to proceed by separate parishes, and to exchange lists

of objections, as in counties. This was agreed to by the sitting member's counsel. And being approved of by the committee, they, by their resolutions, gave directions accordingly. 2 Lud. 573.

(b) For this, see ante. 53.

of the house of commons, under § 1, lists of the voters intended to be objected to; and such lists are to be kept by such clerk, in his office, open to the inspection of all parties concerned.

Sect. 2.

Petitions of lat, 2d, and class.

to the inspection of all parties concerned.

By the same clause, such lists are to be delivered in, where the election or return is for any county in England or Wales, ten days, at least, before the day appointed for the consideration of the petition; and upon all other elections or returns for places in England or Wales, five days, at least, before such day.—A provision being at the same time made, that in cases where the consideration of any such petition shall be postponed by order of the house, during the same session, or the petition shall be renewed at the commencement of another session, it is to be sufficient if such lists are delivered within the like periods before the committee for the trial shall be actually appointed.

Sect. 2. 1st, 2d, and 3d agents, to deliver to the clerk of the house of commons, lists of voters intended to be objected to, to be kept in his office, for inspection. Lists to be delivered in, in respect of county elections, or returns for

England or Wales, ten days; and in respect of other places, in England or Wales, five days before the day for consideration of petition. Where consideration of petition postponed by order of the house, or, in cases of renewed petitions, lists to be delivered. such ten or five days before the ap-

SECTION 2. Of the degree of minuteness required in committee.

lists of objected votes.

1, 2, 3. AS to petitions of the first, second, and third classes (a):

(a) For these classes, see ante, 82, 83.

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Sect. 2. Petitions of 1st, 2d, and 3d class. Parties exchanging lists, to give the heads of objection, and to distinguish the same against the names of voters. No precise form of lists.

The statute before mentioned, 53 Geo. 3. c. 71. § 1 (a), requires the parties exchanging lists to give therein the several heads of objections, and to distinguish the same against the names of the voters excepted to.

There is no precise form given by law for such lists, and those which have been adopted in different cases have, in some degree, varied from each other.

Voters intended to be objected to, to be correctly described; objections to them to be exout.

Substantially, it is requisite that they should correctly and distinctly describe the voters intended to be objected to, and that they should explicitly point out the nature of the objecplicitly pointed tions which are to be raised, as to such voters respectively.

> It has been made a question, whether votes proposed to be added to the poll should or should not be included in such lists (b); and also, in many instances, how far the identity of the voters, or the nature of the objections to be made to them, has been sufficiently designated by the statements in the lists.

> These questions, indeed, have arisen under the resolution of the house, but as the terms of

⁽a) For this stat. see ante, see App. ccccxcix. See also 3 Lud. 574. 577, 602, and 53. (b) For the forms of lists, Peck. 41, 42, 47, 387.

the statute (except as to the delivery of the lists to the clerk of the house) correspond with those Petitions of of such resolution, the decisions, under the one. class. may be equally material under the other.

A point of the first description arose in the case 1 Lud. 890. of Bedfordshire, 1785.—Where it was made a Quere. question, whether the cases of votes tendered and proposed to be rejected at the poll, and proposed, on the part added to the of the sitting member, to be added to his num- be included in bers, before the committee, could be entered upon, such votes not being specified in his lists. of objections (a). (Those for the petitioner were included in his lists of objections.)

The committee did not decide whether they could, or could not enter upon votes so circumstanced; but they resolved, that the parties " should deliver to each other, on the next day, a list of all such persons as they meant to add. to the poll in that and the following hundreds, (the lists being arranged by hundreds) and that the consideration of all such votes should be deferred, till all the votes already objected to were decided."

It should seem, however, that the wording of semble.

The insertion

⁽u) In the Middlesex case, jected votes to the poll, 1864.—It was not attempted, Peck. 39, (n.) on either side, to add any re-

Petitions of 1st, 2d, and 3d class. of such votes not necessary. the resolution (or of the statute) would not require such votes to be inserted; and it does not appear that there has been any decision which has gone the length of declaring it to be necessary.

Questions upon the other points have more frequently arisen (a), and the general result of them seems to be that,—

First, with respect to the description regarding the identity of voters, if there be a misrepresentation, in the statement which is by law required either expressly, or by necessary implication, it will constitute a decisive objection to the consideration of votes; unless, indeed, it can be accounted for upon some ground which should shew that the party making the statement might well have reasoned to its accuracy. But that if the misrepresentation be confined to a matter which was not necessary, it will not prejudice the party making it.

Secondly, that with respect to the designation of the objections intended to be made against voters, it must sufficiently point out the nature of such objections; and that votes can only

⁽a) See the case of Water- tion of the house, or the 53 ford, 1803, (post, 239), not Geo. 3. c. 71, but operating depending upon the resoluby analogy.

be attacked upon the objections so pointed out, however clearly it may appear that they are Petitions of vulnerable upon other grounds.

1st, 2d, and 3d. class.

The degree of accuracy required, is however rather to be collected from an examination of the different decisions, than from any definite rule which can be extracted from them.

The above propositions depend upon the folfollowing decisions:

1. As to the description regarding the identity of voters:

Middleser. 1804.—Thomas Pierce was de- 2 Peck. 49. scribed in the list of objections, "Mathew Pierce." The committee determined that his op a wrong christian name, vote should not be questioned.

And in the same case, Humphry Tunkinson, 2 Peck. 50. one of the mill-voters, was objected to by the was objected name of "Henry Tomkinson." The counsel for the christian the petitioner contended, that this vote ought to though evibe struck off, without any further proof; it appearing upon the face of the poll, that it had mitted to be questioned. been given in respect of the same property as those of the other mill-voters, against whom a resolution of the committee had already been passed. The committee determined, that the

Where a voter his vote was not permitted to be question-

Where a voter to by a wrong name, his vote, dently bad, was not perSect. 2.
Petitions of
1st, 2d, and 3d
class.

vote of *Humphry Tunkinson*, not being objected to by the petitioner, is not brought under consideration.

2 Peck. 49.
Where a voter was objected to, by a wrong christian name, but the christian name was perfectly illegible on the poll, the objections to him were, nevertheless, permitted to be gone into.

An exception, however, was made upon this head, where the party was misled by the entry in the poll-book: Thus, in the same case, where Lucius Concannen was described in the lists of objections, "Laurence Concannen;" but on the poll, the christian name of the voter was perfectly illegible; the committee suffered the objections to the vote to be proceeded upon.

In the following instances, which arose also in the *Middlesex* case, 1804, the misrepresentations being upon matters not necessary to be inserted, were holden not to be fatal objections.

2 Peck. 49.
Where, in the objection, there was a mistake in the christian name of the occupier of the voter's freehold, the objections to him were, nevertheless, permitted to be gone into.

Thomas Garman. In the list of objections, on the part of Mr. Mainwaring, the christian name of the occupier of the voter's freehold was stated to be George instead of John, as stated on the poll. The committee would not strike the voter's name out of the list, but proceeded to discuss the objections.

2 Peck. 49. Where the voter was described as residing in a wrong street,

Joseph Tatem.—The voter's residence was stated in Mr. Mainwaring's list to be "Dilt," instead of "Dyot"-street. It was contended,

on the part of the sitting member, that although it was not necessary to have stated the voter's Petitions of residence at all, yet, where one party, in his class. list of objections, took upon himself to state it, the objections and stated it incorrectly, the committee would nevertheless, not suffer the objection to be proceeded in, gone into. since the other party, who was to support the vote, might be misled by this mis-description. -The committee over-ruled the objection, and proceeded to examine the vote.

permitted to be

Zachariah Bowman.—The petitioner, in his 2 Peck. 49. list of objections, had classed this vote in the objected to Finsbury division. He had, in fact, voted in the Tower division. The counsel for the sitting member objected to the vote being called in question; but the committee determined, " that the objection to entering into the consideration of the assessment," (i. e. the objection made to the vote,) "was not valid, but that the counsel might postpone it till they came to the Tower division."

Where a voter was classed in a wrong division, (the objected votes having been arranged by the party objecting, into divisions) the objectionswere nevertheless permitted to be gone into, the consideration being postponed tobe taken in the proper division.

2. As to the designation of the nature of the objections intended to made against voters:

Questions upon this point have constantly arisen during the consideration of petitions, in respect of county elections. There were some in the Sect. 2.
Petitions of 1st, 2d, and 3d class.

cases of *Yorkshire*, 1735 (a), and many in that of Oxfordshire, 1755 (b): but as these cases were before the establishment of select committees, they have not the degree of weight which belongs to more recent decisions. In the following case, however, there were several decisions which may afford very useful instruction upon this part of the subject:

(a) Yorkshire, 2d March, 1735.—The objection in the petitioner's list, which had been delivered under an order of the house, was, that the voter " was not assessed, nor had a freehold of forty shillings per annum, at the place where, at the time of the election, he swore that his freehold did lie." The evidence adduced tending to prove that such person had no freehold at all there, the counsel for the sitting member objected to the admission thereof: but the house resolved, that the counsel for the petitioner should be admitted to give evidence as to a person's having no freehold at all, to whom the petitioners objected, in their list of objections, that "he had not a freehold of the annual value of forty shillings." 22 Journ.

Oxfordshire, 22d Feb. 1755. The same point was decided. 27 Journ. 172.

The Gloucestershire committee made a resolution, in the same words, upon a similar question. 27 Journ. 105.

(b) Oxfordshire, 11th Jan. 1755 .- As to the vote of Stephen Garrett. Under the objection of "As voting in respect or in right of messuages, lands, or tenements, which had not been assessed," &c. it was proposed, on the part of the petitioners, to give evidence, that part only of the freehold for which the vote was given, was assessed, and that part was under forty shillings per annum. And a motion being made, and the question being put, that the counsel for the petitioners be admitted to give evidence that the land for which the voter was assessed to the land-tax was not of the value of forty shillings a year, was negatived. 27 Journ. 72.

In the same case, on the 27th February, such evidence was admitted as to the vote of John Wimbush; but it does not distinctly appear under what class of objections. 27 Journ. 181.

Sect. 2.

Middlesex, 1804.—As to the vote of John Taylor. The objections were, "No freehold:" "no freehold as described on the poll:" "no freehold in the division for which he voted."

It was proposed to shew, that the premises for which he had voted were situated in the city of London, and not in the county of Middlesex: it was insisted, that it was not competent for the party objecting to give any such proof, since this voted;" evihad not been included in the list of objections, given to shew But the committee resolved that the evidence in respect of might be received; (and the premises being were in anshewn to be in London, and not in Middlesex, the vote was declared bad).

Petitions of 1st, 2d, and 3d class. 2 Peck. 49. Under the objections of "No freehold;" "No freehold, as described on the poll;"
" No freehold in the division for which he dence may be that premises which he voted other county.

In the same case.—The vote of William Abud 2 Peck. 50. was objected to, as "having no freehold;" and as jections of "having no freehold as described on the poll." The witness who was called to establish these objections, was asked whether the premises had not been conveyed to the voter within a year given that the previous to the election. The committee determined, that such evidence not applying to the objections given in, should not be entered into.

Under the ob-" No freehold;" "No freehold as described on the poll;" evidence. cannot be been conveyed to the voter within a year.

Middlesex. 1804.—As to the vote of Richard 2 Peck. 50. Friday. The objections relied on were, "no jections, "No freehold;" " no freehold, as described on the "Reehold;"

Under the ob-

Sect. 2. Petitions of 1st, 2d, and 3d class. as described on the poll;" " Not duly assessed;" evidence cannot be given that the voter had no freehold in of the tenant named on the poll.

poll;" " not duly asssesed." He had voted for land in his own occupation. The assessor was called to explain the assessment; and was asked in his cross-examination, by the counsel who impeached the vote, if Friday had any land in his own occupation. It was said that this question ought not to be put, because it pointed to the occupation another objection, which had not been made: namely, that the voter had no freehold in the occupation of the tenant named on the poll. It was answered, that the question tended also to shew, that he had no such freehold as he had described on the poll. The committee determined that the question should not be put.

2 Peck. 51. Under the objection "Not assessed," a deed having been produced to shew the ownership of the freehold to be in the voter, evidence cannot be given to shew that he was not the person who voted at the election: Nor to contradict such deed (no doubt arising upon the face of it): Nor to shew that the voter had no freehold.

Middlesex, 1804.—As to the vote of Edward Batsford. He voted for a share in Fulham Bridge. The objection was, "not assessed." In the assessment, the property was rated in the name of the proprietors of Fulham Bridge: it therefore became necessary to shew, that the voter was a proprietor, and a conveyance was produced to Edward Batsford, dated 1799. counsel, who objected to the vote, proposed to shew, that this Edward Batsford, to whom the conveyance was made, was not the same person who had voted at the election. The committee rejected this evidence, since no specific objection had been made, that the voter "had no freehold;" or, " no such freehold as described on the poll." It was then proposed to shew, Petitions of that the voter had sold his freehold before the class. election: but the committee determined. "that no doubt arising on the face of the deed put in by the petitioner" (to answer the objection of non-assessment), "no evidence should be received to contradict the purport of it, or to shew that the voter had no freehold."

SECTION 3. Of the non-insertion of objected votes in the lists; and of the insertion of frivolous objections.

1, 2, 3. WITH respect to petitions of the first, second, and third classes (a):

It is of great importance that the lists of objected votes should be properly framed, and that they should embrace all the objections intended to be relied upon; inasmuch as by the stat. 53 Geo. 3. c. 71. \S 2 (b), no evidence is to be adduced before the select committee appointed for trial of a petition, upon which such list shall have been delivered in, against the validity of any vote, upon any head of objection to such

⁽a) For these classes, see. (b) For this stat. see ante, tc. 82, 83. ante, 82, 83.

Sect. 5. Petitions of 1st, 2d, and 3d class.

voter, other than the heads specified and particularized against him in such list.

It might occur that a party should purposely introduce into his list of objections, many which he should know to be unfounded, merely for the purpose of harassing and misleading the opposite party, and without any hope or prospect of substantiating such objections.

Where objection stated, and no evidence pro-duced before committee to substantiate it, and committee are of opinion that was frivolous or vexatious, they are to report the same to the house. and the opposite party is to be entitled to costs, to be ascertained and recovered as costs on frivolous or yexatious petitions.

In order to prevent this abuse—By the stat. 53 Geo. 3. c. 71. § 2 (a), If any ground of objection shall be stated against any voter in such lists, and no evidence shall be produced before the select committee to substantiate such objection, and if such committee shall be of opinion, that such objection was frivolous or vexatious, they such objection are to report the same to the house of commons, together with their opinion on the other matters relating to such petition; and the party or parties opposite are, in such case, to be intitled to recover from the party or parties by whom or in whose behalf any such objections were made. the full costs and expenses incurred by reason of such frivolous or vexatious objections. costs and expenses are to be ascertained and recovered as the costs and expenses in cases of

(a) For this stat. see ante, 54.

CHAP. IV. OF OBJECTED VOTES.

frivolous or vexatious petitions, which will be stated hereafter.

1st, 2d, and 3d

SECTION 4. Scotland.

NEITHER did the resolution of 1735-6 (a), No exchange nor does the act of the 53 Geo. 3. c. 71, extend of lists in reto elections for places in Scotland. The voters tion petitions from Scotland. for counties are not numerous; and those for boroughs, owing to the mode of election by delegates, are in proportion still less so; so that the arrangement as to the exchange of lists is not in any case called for, in respect of election petitions from Scotland.

SECTION 5. Ireland.

AS to the exchange of lists, and when such See ante, sec. 1. lists are to be exchanged:

1, 2, 3. With respect to petitions of the first, second, third and fourth classes (b):

(a) See App. ccccxcviii.

⁽b) For these classes, see ante, 82, 83.

Petitions of st, 2d, and 3d lass. The exchange of lists was required in all cases of petitions in respect of elections for places in *Ireland*, before it was generally required in respect of those in *England*; and, with the exception of the time and manner of delivering in such lists, the provisions of the legislature correspond with those before-mentioned in this chapter.

fpp. cecxl.

By the stat. 42 Geo. 3. c. 106. § 3, all the parties appearing before any select committee, for the trial and determination of the merits of any petition (of the four first classes) are to interchange with and among each other lists of all such votes, and of the names of all such voters to which either of such parties purpose and intend to object.

As to when such lists are to be exchanged:

The exchange of lists does not take place in the case of petitions in respect of places in *Ireland*, previously to the consideration of the petition, as in other instances. The before-mentioned stat. of the 42 Geo. 3. c. 106. § 3. directs, that it shall be made immediately after the chairman of the committee shall have been chosen, and before any other business shall be proceeded upon by the parties, or either of them.

pp. eccxl.

As to the degree of minuteness required in lists of objected votes:

Petitions of 1st, 2d, and 3d

See ante, sec. 2.

1, 2, 3. With respect to petitions of the first, second, and third classes (a):

The observations before made under this head See ante, 225. may be equally looked to in the case of petitions relating to elections in Ireland. The following case will also afford some additional information upon the subject:

Waterford, 1803.—The statement which was 1 Peck. 217, first given in on the part of the sitting member It must be did not contain the names of the voters arranged lists what obunder the distinct heads of objection, in the manner in which it was afterwards done; but the each voter obheads of objection were set together, and under them in one general list the names of all the persons objected to, without distinguishing what objection applied to each particular person (b).

stated in the jections are injected to.

(a) For these classes, see ante, 82, 83.

(b) The counsel for the petitioner contended, that this statement was not sufficient to answer either the express direction, or the purpose of the it besaid that the petitioner was to give so minute a statement, advertised of the matters and as might tend to disclose any things upon which the sitting matter of evidence which he

member meant to rely, when he was merely furnished with a long list of objections, and of 250 votes; not being enabled to apply any one of the objections to any individual. It was admitted that the sitstatute. They asked how could, ting member was not bound. Sect. 5.
Petitions of 1st, 2d, and 3d class.

It was objected on the other side, that this statement was not sufficient to answer either the express direction or the purpose of the statute; and

was about to produce in support of what he insisted upon; but that a sufficient description only was required of his case, to apprise the other party of the nature of it, and to enable the committee to send proper directions to the commissioners for the investigation of it. But it was contended, that the list now delivered in was not calculated for this purpose; the whole poll, accompanied with the detail of every possible objection that could arise in such a mode of election, would have formed an equally good guide to the committee, and to the petitioner. And it was observed, that in the case of county elections in England (which, in this respect, was analogous to the present), each party is bound to give in lists, specifying what objection applied to each voter.

The counsel for the sitting member defended his statement. They argued, that the statement was required, 1. For the purpose of giving the petitioner general information; that in this case, from necessity, he derived the unusual advantage of becoming acquainted with the defendant's case, before he had finished his own: and, 2.

For the purpose of enabling the committee to direct the attention of the commissioners to certain general heads of evidence, the detail of which they would receive from the agents of the parties in Ireland: that each party was bound by his statement, whether it were drawn up in a more full, or in a more confined mode: but he was not bound to any form in his statement. It was even said, that had the sitting member given in such a list as was alluded to by the other side, of all the names on the poll, the committee were bound to receive it, and act upon it. They distinguished the case of county elections from the present, by remarking the different mode of expression made use of in the stat. 42 Geo. 3. 479 and in the resolution of the house of commons, requiring lists in counties to be exchanged: the former required, generally, " lists of all such votes, and of the names of all such voters, to which either of the parties purpose and intend to object:" the words of the latter are, "giving in the said lists the several heads of objection, and distinguishing the same against the names of

they contended also upon the analogy to the case of county elections, where (at that time, under Petitions of the resolution of the house) each party was bound elass. to give in lists, specifying what objections applied to each voter. On the other hand, it was insisted that the statement was such as the law required. The wording of the statute was distinguished from that of the resolution of the house, and it was urged, that a general outline of the case was all that the statute meant should be given. The committee decided that the statement was insufficient.

the voters excepted to." As the statute had no such words, the provisions of it were satisfied by delivering a list in a general form. A general outline of the case was all that the statute meant should be given.

March 2. The committee pronounced their decision, that the statement was insufficient. It was suggested, that the fourteenth section of the act clearly shewed that it must be sufficiently explicit to enable the committee, in their order, " specially to assign and limit the facts and allegations, matters and things, respecting which the said commissioners are required and directed to examine evidence." The statement was immediately corrected, by arranging the voters in classes.

CHAPTER V.

OF SELECT COMMITTEES.

- SECTION 1. Of classing election petitions, in order to the appointment of select committees thereupon.
- SECTION 2. Of appointing the time for taking election petitions into consideration.
- SECTION 3. Of notice of taking election petitions into consideration.
- SECTION 4. How far the consideration of an election petition is to take precedence of the other business of the house.
- SECTION 5. Of enforcing the attendance of members when election petitions are to be taken into consideration.
- Section 6. Of the non-attendance of parties at the time appointed for taking an election petition into consideration.
- SECTION 7. Of the ballot for the formation of a select committee.
- SECTION 8. Of the ballot for the formation of select committees, where more than one election petition stands for consideration on the same day.
- Section 9. In what cases members are disqualified or excused from serving on select committees.
- SECTION 10. Of the appointment of nominees to serve upon select committees.
- SECTION 11. Of reducing the ballotted list to form a select committee.

Section 12. Of the meetings, sittings, and adjournments of select committees, as directed by the statutes.

Section 13. Of the proceedings of select committees, as directed by the statutes.

Section 14. Of the statutory provisions with respect to witnesses attending before select committees,

SECTION 15. Of the attendance of members put upon a select committee, and herein of the consequences of their absence.

Section 16. Of the reports of select committees to the house; of their report, that a petition is frivolous or vexatious, and the consequences as to costs, and of the recovery thereof.

SECTION 17. Scotland.

SECTION 18. Ireland.

IT is now intended to shew the constitution and proceedings of election committees in a general point of view, reserving some further observations, and particularly upon the subject of evidence, for subsequent detail.

For the most part, the matter of this chapter applies generally to all petitions.—Upon some occasions, however, it will be necessary to discriminate between the classes.

As to petitions of the *first*, *second*, and *third* classes (a):

(a) For these classes, see anie, \$2,03.

Sect. 1.

pp.

When election petitions are presented, it is with the parties to take proper steps, in order to their petition being entertained by the house. And with respect to petitions complaining of undue elections or returns, it was resolved, on the 6th December, 1774, that according to the true construction of the act of the 10 Geo. 3. c. 16. whenever such petition shall be offered to be presented to the house, within the time limited by the order of the house for questioning the returns of members to serve in parliament, the petition is to be delivered in at the table and read, without a question being put thereupon.

The house, upon a petition being presented, makes an order for taking it into consideration, and this as soon as conveniently may be.

There have been several resolutions of the house, regulating the order of reading petitions which are presented at the same time, for the purpose of taking them into consideration.

p. :clxxxviii A resolution of the 6th December, 1774, directed that such order should be settled by lot.

Another resolution of the 31st October, 1775,

as to renewed petitions delivered in together at the table, directed, that they should be read in the order in which they were directed to be taken into consideration in the preceding session.

Sect 1.

On the 7th November, 1780, they were App. arranged into certain classes; and the precedence among those of the same class was directed to be arranged by lot.

cccclxxxix.

On the 25th May, 1784, petitions were classed App. in a certain order, then fixed .- And on the 1st 68 Journ. 11. December, 1812, that order was altered. It was taking petithen resolved, "that whenever several petitions, sideration. complaining of undue elections or returns of members to serve in parliament, shall at the same time be offered to be presented, Mr. Speaker shall direct such petitions to be all of them delivered in at the table; where they shall be classed, and read in the following order, viz. Such petitions as complain that no return has no returns. been made of a member or members to serve in returns. parliament, in the first class;—such as complain relating to of double returns, in the second class;—such as complain of the election or return of members returned to serve for two or more places, in the third class; -such as complain of returns only, in 4. Petitions the fourth class; —and the residue of such peti-

Order of tions into con-

complaining that there are 2. Double 3. Prutious elections or returns of members returned for more places than one. complaining of returns only.

5. All other. petitions.

tions in the fifth class."—And that the names of the places to which such petitions (contained in the first class, if more than one), shall relate, shall, in the manner therein directed, (which is precisely the same as directed in 1784) (a), be drawn by lot; and the petitions are to be read in the order in which the names are drawn, and so with respect to the petitions of each class respectively.

Renewed petitions to be read, in the order in which they were to be read in the preceding assion.

(Ante, 244.)

Whenever several petitions, complaining of undue elections and returns, are renewed in the same session, they are read in the order in which they were to be read in the preceding session, according to the resolution of the 31st of October, 1715, before stated.

SECTION 2. Of the time for taking election petitions into consideration.

Petitions of 1st class. WITH respect to petitions of the first class (b):

On presenting a petition, a day and hour to be appointed for taking it into considera-

By the stat. 10 Geo. 3. c. 16. §1. (c), whenever a petition, complaining of an undue election

⁽a) See App. cccccc. (c) For this stat. see ante, (b) For this class, see ante, 7.

or return, is presented, a day and hour is to be appointed for taking the same into consideration. Petitions of 1st

class.

The same statute, by § 2, had directed that Former regulations as to no such petition should be taken into considera- such time. tion within fourteen days after the appointment of the committee of privileges. provision has been repealed, by the stat. 11 Geo. Not to be 3. c. 42. § 2. (a) which has substituted an enact- consideration ment that it should not be taken into considera- teen days after tion within fourteen days after the commence-sented, nor ment of the session in which it is presented, teen days after nor within fourteen days after the return shall into crown be brought into the office of the clerk of the crown.

taken into within fourpetition pre-

within fourretura brought

And by the stat. 10 Geo. 3. c. 16. § 3. (b) the house may alter the day and hour which may have been appointed for taking such petition tition into coninto consideration, and appoint some subsequent day for the same, as occasion shall require.

The house may alter the day and hour for taking pesideration.

When there are several petitions to be taken into consideration on the same day, all the petitioners, and other parties, may, by virtue of the ation the same day, the par-

netitions are into consider-) ties under all

(a) For this stat. see ante, (b) For this stat. see ante, Petitions of 1st class.

Patitions of 1st class.

may be ordered to attend at the same time. Where time for taking recognizances enlarged, order for taking petition into consideration may be postponed.

stat. 42 Geo. 3.c. 84. § 1. (a) be ordered to attend within the house at the same time.—It will be remembered (b), that by the statutes 28 Geo. 3. c. 52. § 5. and 53 Geo. 3. c. 71. § 3. the house is empowered to enlarge the time for taking the respective recognizances; in which cases the order for taking the petition into consideration is to be postponed.

Petitions of 2d class.

With respect to petitions of the second class (c):

On presenting a petition, a day and hour to be appointed for taking it into consideration.

By the stat. 25 Geo. 3. c. 84. § 10. (d), whenever a petition shall be presented, in cases where no return has been made, on or before the day on which the writ is made returnable, or within fifty-two days after the date of a writ issued during a session or prorogation of parliament; upon such petition being presented, a day and hour is to be appointed for taking the same into consideration.

Time for taking into consideration to be as in the first class. (Ante, 246.)

The time for this is regulated as with regard to petitions of the *first* class, by virtue of the following enactment, which it will be necessary frequently to recur to:

⁽a) For this stat. see ante,
49.
(b) See ante, 194.
(c) For this class, see ante,
83.
(d) For this stat. see ante, 20.

By the stat. 25 Geo. 3. c. 84. § 11. (a) all the rules, regulations, authorities, and powers, given Petitions of 3d or prescribed by either of the statutes 10 Geo. 3. c. 16. (b) and 11 Geo. 3. c. 42. (c) for regulating the trials of controverted elections, with respect to select committees, to be appointed by virtue of those acts, or either of them, are to be in full force and effect, with respect to select committees to be appointed by virtue of that act (viz. as to petitions of the second class), in as full and ample a manner as if the same were therein repeated, and especially enacted concerning the same.

adopted for second class.

With respect to petitions of the *third* class (d):

· It will be observed, that in cases which the law, under certain circumstances, transfers to this class, petitions must have been originally presented which would have belonged to the first or second classes; and it will be recol- (See ante, 96.) lected that the Speaker is required, by the stat. 28 Geo. 3. c. 52. § 2. (e) to give certain notices, one of which is to be, by insertion in the London Gazette. By the same clause, thirty

⁽a) For this stat. see ante,

⁽d) For this class, see ante,

⁽b) For this stat. see ante, 6.

⁽e) For this stat. see ante.

⁽c) For this stat. see ante,

Sect. 2.
Petitions of 3d class.
Thirty days to intervene between the notice in the Gazette (ante, 95, 96.) and the day of taking petition into consideration.
Petitions of 4th class.

days must intervene between the day of the insertion of such notice in the Gazette, and the day on which the petition is to be taken into consideration; and the order for taking the petition into consideration is, if it be necessary, in order to allow of such interval, to be adjourned.

With respect to petitions of the fourth class (a):

Former regulation.

The stat. 28 Geo. 3. c. 52. § 28. (b) had enacted, that whenever a petition (to be admitted to oppose a right of election, or of appointing a returning officer or officers, determined and reported upon, as before mentioned) should be presented, a day and hour was to be appointed for taking the same into consideration, with the intervention of forty days between the presenting the petition and that day. But the time for taking such petitions into consideration is now regulated by the stat. 53 Geo. 3. c. 71. § 15. (c) which directs that the petition, when presented. is to be ordered by the house to lie on the table till after the expiration of the six months. or the fourteen days, which have been respectively mentioned as being the time allowed for

Petition to lie on the table of the house six months after the presenting it, or 14 days after the time (ante, 97, 98.) allowed for presenting it,

⁽a) For this class, see ante,

(c) For this stat. see ante,

(b) For this stat. see ante,

presenting such petitions.—Within twenty-one sitting days after which six months or fourteen days, a day and hour is to be appointed by the house for taking the same into consideration, fourteen days always intervening between that day and hour of making the order and the day so appointed; for taking peit being also provided, by the same clause, that consideration. such day and hour may from time to time be altered, as to the house shall seem fit.

With respect to petitions of the fifth class (a):

The time of taking such petitions into consideration is necessarily governed by that which class. relates to the petitions of the fourth class, which may have given rise to them.

As to renewed petitions:

It appears, by the recital in the stat. 34 Geo. 3. c. 83. § 1. (b) that the before-mentioned enactment of the 28 Geo. 3. c. 52. § 28. which required the intervention of forty days between the day of presenting certain petitions, and the Former reguday of taking the same into consideration, had been construed to extend to renewed petitions,

Petitions of 4th class. Within 21 sitting days after such sixmonths. or 14 days, to be appointed tition into Fourteen days intervening between the day of appointing and the day appointed. Day and hour may be altered. Petitions of 5th class. Time governed by those of 4th

Renewed peti-

^{. (}a) For this class, see ante, (b) For this stat. see ante,

Sect. 9. Petitions of 5th class. On presenting petitions, a day and hour, 14 days dispointed.

and that this had been found inconvenient; wherefore that statute (after regulating the time of presenting renewed petitions) directs that whenever any such renewed petition shall be at not less than presented, a day and hour, at not less than tance, to be ap- fourteen days distance, is to be appointed by the house for taking the same into consideration.

SECTION 3. Of notice of taking election petitions into consideration.

Petitions of lst class.

WITH respect to petitions of the first class(a):

On presenting petition, when day and hour to be appointed for taking it into consideration, notice thereof to be given forthwith by speaker to petitioners and sitting members, or their order to attend.

Upon the presenting the petition, and the appointment of the day and hour for taking the same into consideration, notice is, by the stat. 10 Geo. 3. c. 16. \S 1. (b), to be forthwith given by the speaker (c), to the petitioners, and the sitting members, or their respective agents, accompanied with an order to them to attend the agents, with an house by themselves, their counsel, or agents, at the time appointed.

⁽a) For this class, see ante, (c) For the form of the 82. speaker's notice, see App. (b) For this stat. see ante, 7. ccccxci,

And by \S 3 (a) of the same statute, where the house shall alter the day and hour for taking Petitions of the petition into consideration, the speaker is to give to the parties the like notice of the alteration, with an order to attend accordingly.

Sect. 3. 2d class. So, the like notice of any alteration of day and hour.

By the stat. 11 Geo. 3. c. 42. § 1. (b), where where several several parties, on distinct interests or grounds stinct interests of complaint, present separate petitions, com- present sepaplaining of an undue election or return, the like like notices notices and orders are to be given to all such to all. parties or their respective agents.

or grounds, rate petitions. are to be given See 1 vol. 322. (a).

These notices are not requisite, nor are they, No notice in fact, given to returning officers, or other per- turning officers sons whose misconduct is complained of in the sons competition.

or other perplained of in petitions.

With respect to petitions of the second class (c):

Petitions of 2d class.

The stat. 25 Geo. 3. c. 84. § 10. (d) directs, On presenting that upon the presenting the petition, and the ap- day and hour pointment of a day and hour for taking the same into considerainto consideration, notice thereof in writing is pointed, notice forthwith to be given by the speaker to the pe- given to petititioners, and to the returning officer or officers, turning officer, by whom the return ought to have been made, an order to at-

petition, when for taking it tion to be apforthwith to be tioners and re-

(b) For this stat. see ante, (d) For this stat. see ante,

⁽a) For this stat. see ante, (c) For this class, see ante.

٠.

Petitions of 2d class. or shall have been made, accompanied with an order to such parties reepectively, to attend the house by themselves, their counsel, or agents, at the time appointed.

If returning officer cannot be found so as to be served with notice, or does not appear, &c. the house may authorize a person to appear in his stead.

If the returning officer or officers by whom the return ought to have been made, or has been made, cannot be found so as to be served with such notice or order, or being served, shall not appear, by himself or themselves, his or their counsel, or agents, at the day or time appointed for taking the petition into consideration, the house, by § 12 (a) of the same act, may permit or authorise any person to appear in his or their stead.

Petitions of 3d class. With respect to petitions of the third class (b);

Petitioners being considered as parties, as in other cases, to be intitled to the like notices. By the stat. 28 Geo. 3. c. 52. § 4. (c) persons who pray to be admitted parties under petitions of this class are to be so admitted, and are to be so considered to all intents and purposes whatever.

The notice, therefore, of the appointment for taking the petition into consideration is given to such persons, as in the case of the original parties in a petition.

⁽a) For this stat. see ante, 21.

⁽b) For this class, see ante, 83. (c) For this stat. see ante, 25.

With respect to petitions of the fourth class (a):

By the stat. 28 Geo. 3. c. 52. § 28.(b), coupled with the 53 Geo. 3. c. 71. § 17. (c), upon presenting the petition, and the appointment of a day and hour for taking it into consideration, notice of such day and hour is to be inserted by order of the speaker, in one of the two next London Gazettes.

Petitions of 4th class. On presenting petition, when day and hour to be appointed for taking it into consideration, notice thereof to be gazetted.

And by the same clause of the former of these statutes, notice is also to be sent by the speaker to the sheriff, or other returning officer of the place to which such petition shall relate. a true copy of such notice is thereby directed to be by such sheriff, or other returning officer, forthwith affixed to the doors of the county hall, tion. or town hall, or of the parish church nearest to the place where the election has usually been holden.

Notice also to be sent by speaker to returning officer, who is to affix a copy to doors of county hall, or town hall. or parish church, nearest place of elec-

By the stat. 53 Geo. 3. c. 71. § 15. (d), upon Notice of day the appointment of the day and hour for taking to be sent to a petition into consideration, or any alteration thereof, notices are to be sent to the petitioners, as in other cases.

petitioners.

⁽c) For this stat, see ante, (a) For this class, see ante.

⁽d) For this stat. see ante, (b) For this stat. see ante,

Bect. 3.

With respect to petitions of the fifth class (a):

Petitions of 5th class. Notice of day and hour, &c. to be sent to petitioners.

The last mentioned provision, whereby notice is to be sent to the several persons who have petitioned the house respecting the rights in question, is sufficiently large to embrace the case of persons petitioning to defend as well as to oppose. The notice, therefore, would be alike given to the petitioners (who are in fact defendants in the cause), as to petitioners under petitions of the preceding class.

SECTION 4. How far the consideration of an election petition takes precedence of the other business of the house.

Petitions in general.

AS to petitions in general:

The proceeding to the trial of controverted elections has been considered to be of such importance, that the law had given it the preference to almost all other business of whatever nature. And as it is, there are still very few exceptions to such preference.

On days appointed for By the stat. 11 Geo. 3. c. 42. § 4. (b), on the (a) For this class, see ante, 84. (b) For this stat. see ante, 17.

day appointed for taking any petition complaining of an undue election or return into considera- Petitions in tion, the house was not to proceed to any other business, except the swearing of members, previous to the reading of the order of the day for house was refor that purpose.

Sect. 4. taking petitions into consideration, the stricted from previously eutering upon any other business, except

This restriction would apply to petitions of swearing memthe first class (a), and the general adoption of the rules and regulations of the 10 and 11 Geo. 3. by the stat. 25 Geo. 3. c. 84. § 11. (b), and the 28 Geo. 3. c. 52. § 29, 30, and 31. (c), in effect extends it to those of the other classes (d).

The postponement of all other business, when an election petition was to be taken into consideration, was found to be inconvenient; wherefore some, though not many, exceptions to it have been from time to time introduced by subsequent acts.

The stat. 28 Geo. 3. c. 52. § 12. (e), enables On days apthe house, previous to reading such order, to re- taking petitions into conceive any report from any select committee ap-sideration, the pointed under the 10 and 11 Geo. 3. or that receive reports

⁽a) For this class, see ante, (d) For these classes, see ante, 83, 84. (b) For this stat, see ante, (e) For this stat. see ante.

⁽a) Forthis stat. see ante, 37.

Sect. 4. Petitions in general. from select committees. enter them on their journals, and give the necessary orders thereupon; may have returns amended; or may postpone the order, for the purpose of attending his majesty, or his commissioners.

On such days, the house may also receive messages from the lords;

or, on days appointed for the trial of articles of impeachment exhibited

by the com-

mons.

act, and to enter the same upon their journals, and to give necessary orders and directions thereupon; and also permits the alteration or amendment of returns by the clerk of the crown, by order of the house. It also authorizes the house, previous to reading such order, to postpone it, for the purpose of attending his majesty, or his majesty's commissioners, in consequence of a message from him or them, signified to the house in the usual manner.

The stat. 32 Geo. 3. c. 1. (a), authorizes the house, on the day appointed for taking into consideration any petition complaining of an undue election or return, or desiring to oppose any right of election, or of appointing a returning officer or officers, which shall have been deemed valid by the determination of any select committee, previous to the reading the order or orders for that purpose, to receive any message or messages from the lords. It also authorizes the house, on the days appointed for the trial of any articles of impeachment by the commons, before the lords in parliament, previous to the reading any such order or orders, to proceed to any business that may be necessary for the purpose of carrying on the prosecution of such impeachment.

(a) For this stat. see ante, 41.

There are also other exceptions, which grow out of the same anxiety of the legislature which Petitions in led to the original restriction, namely, those which relate to the business of a call of the pointed for house, or to any resolutions or orders for the tions into conpurpose of enforcing the attendance of mem- house may pro-These exceptions depend upon the stat. ness relating to 36 Geo. 3. c. 59. § 1. (a), which will be men-house. tioned when treating of the ballot.

Sect. 4. On days aptaking petisideration, ceed to busia call of the

See post, sec. 7.

The stat. 36 Geo. 3. c. 59. § 2. (b) provides, on days apthat the house, on any day when such petition taking election or petitions are ordered to be taken into consideration, is not to proceed to any other business (other than such as may, by act of parliament, be proceeded on, previous to the reading the order of the day for taking such petition or petitions into consideration), until there be an attendance of an hundred members, or until the (unless in the number of forty-nine, not set aside nor excused, shall be completed, other than and except the an attendance calling over the house; adjourning such call, or bers, or until ordering a call on a future day, and making 49, not set such orders relative thereto as they shall think cused, can be fit, or such other orders as to them shall seem expedient for enforcing the attendance of mem- ... bers on the business of the house. lio.

pointed for petitions into consideration, the house is not to proceed to other business, except business relating to a call of the house, or to enforcing the attendance of members cases beforementioned), until there be of 100 memthe number of aside or excompleted.

⁽b) For this stat. see ante, (a) For this stat. see ante,

Sect. 5.
Petitions in general.

SECTION 5. Of enforcing the attendance of members when election petitions are to be taken into consideration.

At time appointed for taking petitions into consideration, the serjeant at arms is to require attendance of members.

AT the time appointed for taking a petition, complaining of an undue election or return, into consideration, and previous to the reading the order of the day for that purpose, the serjeant at arms, in conformity to the stat. 10 Geo. 3. c. 16. § 4. (a), is to go with the mace to the places adjacent, and require the immediate attendance of the members on the business of the house.

And by the same clause, the proceedings of all committees, subsequent to such notice from the serjeant at arms, are to be void.

See anse, 957.

This would apply to petitions of the *first* class; but the adoption of the pre-existing general regulations, by the subsequent statutes, would extend its operation to the other classes.

8 Journ. 163. 68, 298, 321, 43, 339. There have been various resolutions of the house, instances of which there were on the 16th

⁽a) For this stat. see ante, 7.

and 17th February; 17th, 18th, and 23d March; 20th April, 1814; and 23d May, 1815; en- Petitions in forcing the attendance of members, when select committees were to be appointed, by ordering that the speaker should direct that the names of members who should be absent should be set aside, and that a list should be reported at such time as the house should appoint; and that the members for whose non-attendance sufficient excuse should not be made, should be taken into custody. And the names of defaulters have been accordingly reported, and the members ordered to attend; whereupon some, who could justify their absence, were excused, and others ordered into custody (a).

69 Journ. 195. 70 Journ. 315.

SECTION 6. Of the non-attendance of parties at the time appointed for taking an election petition into consideration.

WITH respect to petitions in general:

The parties upon a petition are bound to attend at the time appointed by the house; and

(a) See the Journals, 18th and 22d February, 1813; 28th April, and 19th May, 1814.

Sect. 6. '
Petitions in general.

Ante, 210.

in the event of petitioners neglecting so to do, their recognizances will be forfeited, under the stat. 28 Geo. 3. c. 52. § 9. as before stated; and the petition will fall to the ground, under the following provisions:

If, within an hour of the time appointed, the petitioner or petitioners, or some or one of them, shall not appear, &c. the order for taking the petition into consideration is to be discharged, and the petition to be no further procceded upon.

By the stat. 28 Geo. 3. c. 52. § 13. (a), if, within one hour after the time fixed, in pursuance of the statutes 10 Geo. 3. c. 16. 11 Geo. 3. c. 42. and 25 Geo. 3. c. 84. and of that act, for calling in the parties, for the purpose of proceeding to the appointment of the select committee, the petitioner or petitioners signing the petition, or some one or more of them, shall not appear by himself or themselves, or by his or their counsel or agents, the order for taking the petition into consideration is to be discharged, and the petition is not to be any further proceeded upon.

Where petitioners fail to appear at the time By the stat. 53 Geo. 3. c. 71. \S 9. (b), in cases, where the petitioner or petitioners shall

(a) For this stat. see ante,

There have been several instances in which petitioners have appeared, and conducted their own cases. In the two Southwark cases, in 1796, Mr. Tierney, the petitioning candidate, did this, Clifford, 2. 130; as did Mr. Becket, the petitioning candidate in the 58;

case of Newcastle-under-Lyne, 1803, 1 Peck. 489; and as did also Sir Thomas Turton, also petitioning candidate in the Southwark case, 1804, 2 Peck. 149; and Mr. Hunt, who petitioned in the case of Bristol, 25th Feb. 1813. 68 Journ. 221. Sect. 7.

(b) For this stat, see ante,

fail to appear before the house, by himself or themselves, or by his or their counsel or agents, Petitions in at the time fixed for the appointment of the select committee (the house not having permitted appointment of the petition to be withdrawn), and the order for mittee, the the consideration of such petition shall be thereupon discharged, in pursuance of the 28 Geo. 3. c. 52., the party or parties who shall attend the order being house in opposition to such petition are to be the party conintitled to recover from the petitioner or peti-position to the tioners, the full costs and expenses incurred by reason of such petition (which, by the 53 Geo. 3. against the petitioner. c. 71. § 10. (a), are to be all reasonable costs, as between attorney and client.)

general. fixed for the the select comhouse not having permitted the petition to be withdrawn, and the discharged, tending in oppetition, is to recover costs

Sect. 6.

It happened, in the following case, that the petitioner was confined for debt; but his attendance was authorized nevertheless:

London, 1804.—The petitioner being a pri- 2 Peck. 271. soner for debt in the Fleet prison, at the time of sioner was in the trial of his petition, the chairman, on the application of his counsel, issued a warrant to attendance. him to attend in person before the committee.

Where petiprison for debt. a warrant was issued for his

⁽a) For this stat. see qute, 38.

Sect. 7.
Petitions in general.

Section 7. Of the ballot for the formation of a select committee.

WITH respect to petitions in general:

The provisions of the law, with respect to the ballot, were in the beginning applicable to petitions of the *first* class only. By adoption, however, they now apply equally to petitions of the other classes, by virtue of the statutes 25 Geo. 3. c. 84. § 11. (a), and 28 Geo. 3. c. 52. § 32. (b). It will not, therefore, be necessary to discriminate to which sort of petition each particular enactment may have at first applied.

Before we come to the proceedings upon the actual ballot, it is to be observed, that the legislature has taken such precautions as are best calculated to prevent any unnecessary delay in these proceedings, and to prevent the possibility of any improper contrivance in the management of them,

The stat. 10 Geo. 3. c. 16. § 16. (c), directs,

⁽a) For this stat. see ante, 21.

⁽b) For this stat. see ante, 37.

⁽c) For this stat. see ante, 11.

that the names of all the members written or printed and rolled up (in the manner which will Petitions in be presently stated), shall, previously to the day appointed for taking the petition into considera- Names of all tion, be prepared by the clerk or clerk assistant, to be previand by him put into a box or parcel, in the by the clerk or presence of the speaker, with an attestation by the clerk or clerk assistant, purporting that the into a box or names of all the members were by him put parcel, to be therein; which said box or parcel the speaker sealed by the is to seal with his own seal; and to annex an attestation thereto, signed by himself, purporting that the said box or parcel was made up in his presence in the manner directed by the act.

the members ously prepared clerk assistant of the house, aftested and

And as a further check against any contrivance, the same clause further directs, that as soon as the parties shall be withdrawn (when the ballot shall have taken place in the manner about to be stated), and before the house shall enter on proceeds on any other business, any member may require any member, that the names of all the members which remain that the names undrawn shall be drawn and read aloud by the shall be drawn said clerk or clerk assistant.

After the ballot shall be finished, as soon as the parties shall be withdrawn, and before the house other business. may require undrawn and read aloud.

The time having been fixed for the considera- At time aption of an election petition, and the proper notices and orders having been given to the par- into consideration, on return ties on either side, they are to attend accord-

pointed for taking patitie into consideraof serjeant at

Sect. 7. Petitions in general. be counted.

ingly, by themselves, their counsel or agents, in order that the house may proceed to the formaarms, house to tion of the select committee.

If less than 100 members present, the order for taking petition into consideration to be adjourned to the next day (unless that be Sunday, Christmas-day, or Good Friday.)

At the appointed day and hour, the serieaut at arms having required the attendance of the members, as before stated, and being returned to the house, the stat. 10 Geo. 3. c. 16. § 4. (a) directs, that the house should thereupon be counted, and that if there should be less than an hundred members present, the order for taking the petition into consideration is to be immediately adjourned to a particular hour on the following day, except it should be Sunday, or Christmas-day (to which exception Good Friday was subsequently added by the 28th Geo. 3. c. 52. § 10. (b).

The house is to adjourn to such day. And so from day to day, till there should be 100 members present at the reading the order of the day for taking the petition into consideration.

The above clause of the 10th Geo. 3. c. 16. further directs, that in such case the house shall adjourn to such day, and upon that day proceed in the same manner; and so on from day to day. till there should be an attendance of one hundred members at the reading the order of the day to take the petition into consideration.

If on the day adlac

at diffe

....

If it shall happen, that on the day immedi-

(a) For this stat. see ante,

(b) For this stat. see ante,

ately preceding Christmas-day, Whitsunday, or Good Friday, after reading the order of the day Petitions in for taking the petition, it shall be found that there are not an hundred members present, or that the number of forty-nine members, not set aside or excused (the grounds for which will present, or if 49 be hereafter explained) cannot be completed, the stat. 28th Geo. 3. c. 52. § 11. (a), authorized the house to direct that such order should be adjourned for any number of days, and the house was by that statute to have been then immediately adjourned to the day and hour to which such order should have been adjourned.

Sect. 7. Whitnenday, or Good Friday. there are not 100 members not set aside or excused cannot be completed. the house may be adjourned for any number of days.

An exception has been made to the necessity of an immediate adjournment in the above cases. by the stat. 36 Geo. 3. c. 59. § 1. (b), if, after counting the house, there should be less than an hundred members present; or if the number of forty-nine members (not set aside or excused) cannot be completed, the house is authorized, after the order or orders for taking such petition into consideration shall have been adjourned, to proceed in like manner as they might have proceeded if there had been no such order, upon any order of the day for the call of the house, may be called which shall have been previously fixed for that journ the latter day, and to direct that the house, in pursuance

If after counting the house, there are not 100 members present, or if 49 not set aside or excused cannot be completed, the house (after adjourning the order for taking the petition into consideration) may proceed upon any order for a call of the house fixed for that day, to direct that the house over, or to adorder, and to

(a) For this stat. see ante, 28. (b) For this stat. see ante, 44.

Sect. 7. Petitions in general. make correct or proper orders.

of such order, should be then called over, if they should so think fit, or to direct that such latter order should be adjourned to such future day as they should appoint, and in either of such cases to come to such resolutions, and make such orders relating thereto as are usual, or as to them shall seem meet.

And if there be no order of the day for a call of the house, may order one for a future day, and make any thereto, or for enforcing attendance of members, and then adjourn.

If no such proceedings shall take place, or the house shall be adjourned for want of members, the house is to be deemed to be adjourned to the day to which order er orders adjourned.

And the same clause, after authorizing the house, in case there should be no order of the day for a call of the house for that day, to order one for a future day, and to make orders relating orders relating thereto, or other orders for enforcing the attendance of members on the business of the house. and directing that it should then adjourn, and so from time to time as occasion should require: directs, that in case no such proceedings with respect to any call of the house, or the other matters before-mentioned, shall take place, or, if in the course of such proceedings the house shall be adjourned for want of members, it is to be deemed and taken, and to be declared to be adjourned to the same day, to which such order or orders shall have been adjourned.

House not to proceed on one matters till doors walocked, &c.

The same clause further provides, that in case the forty-nine members (not set aside or excused) cannot be completed, the house shall not proceed upon any of the matters therein beforementioned, until the door of the house is unlocked, and the parties, their counsel, or agents, Petitions in are withdrawn from the bar.

Having inquired into the provisions for cases where the ballot cannot take place, we now come to the regulations under which the ballot is conducted:

If, after summoning the members and count. If upon counting the house, at the day and hour fixed for the at the day and consideration of the petition, one hundred mem- the considerabers shall be found to be present, the stat. 10 tion 100 mem-Geo. 3. c. 16. § 5. (a) directs, that the petitioners, by themselves, their counsel or agents, counsel or and the counsel or agents of the sitting members, shall be ordered to attend at the bar, and that then the door of the house shall be locked. and that no member shall be suffered to enter into or depart from the house, until the petitioners, their counsel, or agents, and the counsel should be dior agents for the sitting members, shall be directed to withdraw.

ing the house hour fixed for tion of the petibers are present, the peti-tioners, their agents, and the counsel or agents of the sitting members, are to attend at the bar. the door of the house is to be locked, and until they rected to withdraw, no mes ber is to enter or depart.

And by the same clause, when the door of the The order of house shall be so locked, the order of the day is to be read. to be read, and the names of all the members of of all the me

⁽a) For this stat. see ante, 8.

Sect. 7. Petitions in general. bers of the house, written on pieces of parchment or paper, to be put into boxes or glasses, from whence they are to be drawn by the clerk assistant of the house, and delivered to the speaker, who is to read them to the house; and so on till 49 names are completed.

the house, written or printed on distinct pieces of parchment, or paper, as nearly as may be of equal size, and rolled up in the same manner, are to be put in equal numbers into six boxes or glasses, to be placed on the table for that purpose, and are to be there shaken together. The clerk or clerk assistant attending the house is then publicly to draw out of such six boxes or glasses, alternately, such pieces of parchment or paper, and to deliver the same to the speaker, to be by him read to the house: and this course is to be continued until forty-nine names of the members then present shall be drawn.

There are some grounds upon which members whose names may be drawn are intitled to be excused from serving. These will presently be explained; as will also the appointment of the two members, who are to be added by nomination.

If at the time of ballotting, the number of 49 members (not set aside nor excused) pleted, the house is to proceed as not 160 members present : upon counting the house.

It may happen, that upon the ballot the number required to form the select committee cannot be completed; in which case, the stat. 11 cannot be com- Geo. 3. c. 42. § 3. (a) directs, that if at the time of drawing by lot the names of the memwherethereare bers, in manner prescribed by the 10 Geo. 3. c. 16., the number of forty-nine members, not set aside nor excused, cannot be completed,

(a) For this stat, see ante, 16.

the house is to proceed in the manner they are directed by that act to proceed in case there be less than one hundred members present, at the time prescribed for counting the house, and so from day to day as often as the case shall happen.

SECTION 8. Of the ballot for the formation of select committees, where more than one election petition stands for consideration on the same day.

WITH respect to petitions in general:

Petitions in

It happens, that in some instances several petitions are to be taken into consideration on the same day: This case is contemplated, and particularly provided for by the stat. 42 Geo. 3. c. 84.

That statute, by § 1 (a), directs that where two where two or or more petitions, under the stats. 10 Geo. 3. tions are to be c. 16. 11 Geo. 3. c. 42. 25 Geo. 3. c. 84. or 28 Geo. 3. c. 52. are to be taken into consideration on the same day, after the on the same day; the house, after summoning have been

more petitaken into consideration house shall counted, the petitioners

(a) For this stat. see ante, 47.

Sect. 8. and parties to attend within the house at the same time, before the door shall be locked; and after 49 names shall have been drawn, and compléted to form the first committee, to proceed in like manner to form the second, third, fourth, and such other number of committees as may be requisite; and such committees are to be appointed according to the same rules as in the case of forming one committee only.

its members, and after they shall have been counted, may order all the petitioners, and other parties, by themselves, their counsel or agents, to attend within the house at the same time. before the door shall be locked; and after the list of forty-nine names of members present shall have been drawn by lot, and completed in order to form the first committee, to proceed forthwith, and before the door of the house shall be opened (except for the purpose directed by that act), to draw by lot, and complete in like manner out of the same boxes or glasses, another list of forty-nine names, of the remaining members present, in order to form the second committee; and in the same manner to draw by lot and complete successive lists of forty-nine names of the remaining members present, in order to form the third and fourth, or such other number of committees as may be requisite; and the select committees for the trial of such petitions, and the nominees, are to be appointed according to the same rules and regulations as where only one list is formed.

Lists not to be formed for more than one committee, unless 120 members prosent on counting the house; The same statute, by $\S 2$ (a), provides, that successive lists are not to be so formed for more than one of such successive committees, unless

⁽a) For this stat. see ante, 49.

one hundred and twenty members shall be present in the house at the time of counting it; nor for more nor to form successive lists for more than two such committees, unless two hundred members shall then be present; nor for more than three such committees, unless two hundred and seventy members shall be present; nor for more than four such committees, unless three hundred and four, unless 360 sixty members shall be present; nor for more for more than than five such committees, unless four hundred and sixty members shall be present.

The stat. 42 G. 3. c. 84. § 5. (a) provides that into consideraif two or more petitions are to be taken into con- same day, and sideration on the same day, and it shall happen members sufby reason that a sufficient number of members successive lists, liable to serve are not present in the house, that form lists, as successive lists cannot be formed upon all such enabled, by the petitions; yet the house may, nevertheless, pro- sent: ceed to form the list or lists, and appoint the select committees, upon one or more of such petitions, as far as they are enabled to do so, by the number of members present; and may after- ing petition or wards proceed to other business; and the order consideration or orders for taking the remaining petition or journed, as petitions into consideration shall be adjourned, cannot be as in cases where petitions cannot be taken into sideration for consideration, for want of sufficient attendance, ficient attendance

Sect. 8. than two committees, unless 200 members present; nor for more than three committees. unless 270 present; nor for more than present; nor five committees, unless 460 present.

If two or more petitions are io be taken tion, on the there are not ficient to form the house may far as they are number preand may afterwards proceed to other business; and the orders for taking the remainpetitions into are to be adwhere petitions taken into conwant of a sufance.

Sect. 9.

Section 9. In what cases members are disqualified or excused from serving on select committees.

Petitions in general.

WITH respect to petitions in general:

The attendance of members at the formation of select committees is compulsory (as has been seen from the regulations which are made to ensure it); and the serving thereupon is a duty, from which those who may be chosen upon the ballot cannot withdraw themselves, except in some few cases.

In some instances, however, the law disqualifies them; and in some others exonerates them from serving, if they are inclined to avail themselves of their excuses.

Members having voted at the election complained of in the petition, or being themselves petitioners, or being petitioned against, or whose return shall not have been brought in 14 days, if drawn, to be set aside.

By the stat. 10 Geo. 3. c. 16. § 6. (a), if the name of any member, who shall have given his vote at the election, complained of in the petition, (upon which the ballot is taking place;)—or, who shall be a petitioner, complaining of an undue election or return;—or, against whose return a petition shall be then depending;—or, whose return shall not have been brought in fourteen days, shall be drawn, his name is to be set

⁽a) For this stat. see ante, 8.

aside, with the names of those who are absent from the house.

Petitions in general.

By § 7 (a) of the same act, if the name of Member sixty any member of sixty years of age, or upwards, upwards, to be be drawn, he is to be excused, if he shall require require it, it, and verify the cause of such requisition upon excuse upon oath.

years of age, or excused, if he and verify the

The same stat. by § 8 (b), provides that if the Members havname of any member, who has served on such select comselect committee, during the same session, be the same sesdrawn, he is, if he requires it, to be excused ston, to be excused, if they from serving again in any such select committee, unless the unless the house shall, before the day appointed for taking the petition into consideration, have resolved that the number of members, who have not served on such select committee, in the that session is insufficient. same session, is insufficient to fulfil the purposes of the act, respecting the choice of such select committee.

mittees during sion, to be exrequire it, house shall have resolved that the number of members not having served in

By § 9. (c) of the same act, no member who No member after having been appointed to serve in any appointed on such select committee, shall, on account of in-committee,

having been and excused from attending

(a) For this stat. see aute, cuse upon this ground, see throughout, is to be deemed Colchester, 18th Feb. 1813. to have served. (b) For this stat. see ib. 68 Journ. 173.

For an instance of an ex-

(c) For this stat. see ante, 9.

Sect. 9. Petitions in general.

ability or accident, have been excused from attending the same throughout, is to be deemed to have served on any such select committee.

Any other member offering and verifying any other excuse, on oath, the taken down, that it may be entered on the journals, and the opinion of the house taken: If the house shall resolve that he cannot serve, without manifest detriment, he is to be excused.

Members holding great offices usually excused.

And by § 10 (a), if any other member shall offer and verify upon oath any other excuse, the substance of the allegations so verified is aubstance to be to be taken down by the clerk, in order that it may be entered on the Journals; and the opinion of the house is to be taken thereon; and if the house shall resolve that such member is unable to serve, or cannot, without great and manifest detriment, serve in such select committee, he is also to be excused from serving.

> Under this provision, it is usual to excuse members, who hold high and important offices, with their attendance upon which, the serving on a select committee must evidently interfere (b).

Butter

Where members are set aside, or excused, the names of others are to be drawn, who

The stat. 10 Geo. 3. c. 16. § 11. (c) directs, (and this applies by adoption in all cases) that instead of the members, so set aside or excused,

(a) For this stat. see ante,

(b) Thus, in the case of Great Grimsby, 16th Feb., 1813, where Mr. Vansittart, the chancellor of the exchequer, and Lord Castlereagh, one of the principal secretaries of state, were drawn. they were severally excused. 68 Journ. 163.-So in that of Denbigh, 11th March, 1813, Sir John Nicholl, the Dean of the Arches, was excused. 69 Journ. 297 🗥

(c) For this stat. see ante. 9.

the names of other members are to be drawn: and these may in like manner be set aside or ex- Petitions in cused, and others drawn to supply their places, may also be until the whole number of forty-nine members, set aside, or excused in not liable to be set aside or excused, shall be like manner. complete.

By 10 Geo. 3. c. 16. § 15. (a) if upon the Membersindrawing out the name of any member by lot, minees, and so declared, and the petitioners, or sitting members, or their consenting agents, shall declare that such member is in- set aside. tended to be one of the two nominees to be nominated by them respectively, and if he shall consent to such nomination, his name is to be set aside, and unless objected to, he is to serve as such nominee, and the name of another member is to be drawn to supply his place.

tended for nothereto, to be

There is a corresponding provision for the case where one or more petitions are to be taken into consideration on the same day.

The stat. 42 Geo. 3. c. 84. § 4. (b) enacts Where several and provides, that if upon drawing out the to be taken name of any member, by lot, upon one of such ation on the petitions, the petitioners, or sitting members, or the agents, who shall have been ordered, under

into consider-

⁽a) For this stat. see ante, 11.

⁽b) For this stat. see ante, 50.

Sect. 9.

Petitions in general.

members, intended for nominees upon any of such petitions, and declared so to be, and consenting, to be set aside.

or by virtue of that act, to attend within the house upon any other petition, shall declare that such member is intended to be one of the two nominees to be nominated by them respectively; and, if such member shall consent to such nomination, his name is to be set aside, and another member is to be drawn to supply his place, to complete the number of forty-nine to be drawn by lot.

Post, 281. 283, 284.

It will be seen that persons thus pointed out for nominees may be objected to or excused upon the same grounds as the other members.

Members excused upon grounds, applying in respect of one petition, may be drawn upon another.

There may be some ground of objection or excuse, applying to a member in respect of one petition, but not of others; wherefore in cases where the house proceeds to form successive lists, in order to form two or more committees, under the stat. 42 Geo. 3. c. 84.; it is provided by § 3. (a) of that statute, that if any member, whose name is drawn, shall be excused for some reason, which applies especially to any one petition, his name is to be returned into the box or glass from whence it has been taken, so that it may be again drawn by lot upon any of the following petitions.

With respect to petitions of the fourth class (b)

⁽a) For this stat. see ante, 50.(b) For this class, see ante, 84.

One ground upon which the name of a member drawn is to be set aside, applies exclusively Petitions of in petitions of this class:

Sect. 9. 4th class.

It being considered to be unfit that any member having served on a select committee, which upon commithas reported their determination, with respect to the right of the right of election or of choosing, nominating, choosing or appointing at rourning officer or officers, officer or should also serve on a select committee, to be officers not to sit upon select appointed to try the merits of a petition, opposing such determination, the stat. 53 Geo. 3. c. 71, § 16. (a) enacts, that if upon the appointment of against such right. any such last-mentioned select committee, the name of any member shall be drawn, who shall have served on such former committee, and was present at the time of such determination, his name is to be set aside.

Members having served tee, reporting election, or of returning committee, appointed to the petition of ar peal

SECTION 10. Of the appointment of nominees to serve upon select committees.

WITH respect to petitions in general:

Petitions in

The distinctions necessary to be noticed under this head are not connected with the difference of the classes, but depend upon other circumstances which will appear herein.

(a) For this stat. see ante, 61.

Sect. 10.
Petitions in general.

The only absolute selection, which the law allows of, in the formation of select committees, is that which regards the nominees. The privilege is given to the respective parties upon an election petition, if there be two such parties only, of naming, each one member to be added to the number drawn by lot;—and in cases where this privilege is not availed of, or where there are more than two such parties, two members are added; in the former case, by lot, and by the selection of the other members of the committee, in the latter.

The rules, which regard the appointment of nominees, depend upon several statutory provisions, which have been made from time to time, as it was found expedient to provide for the different cases.

Members to be appointed nominees must be present in the house. It may be observed here, that each of the statutes, regulating such appointment, requires that any member to be named should be present.

When the number of 49 members not set aside, or excused, is complete, one member is to be named on the part of petitioners, and another on the part of

By the stat. 10 Geo. 3. c. 16. § 11. (a), when the number of forty-nine members (before spoken of), not liable to be set aside nor excused, is complete, the petitioners, or their agents, are to name one, and the sitting members, or their agents, are to name another, from among the

(a) For this stat. see ante, 9.

members then present, whose names shall not have been drawn, to be added to those who shall Petitions in have been chosen by lot.

general. the sitting members to be added to the 49

It has been already seen, that if, upon the Anic, 276, 277. ballot, the name of a member who is intended by either party for a nominee be drawn, upon a declaration to that effect by such party, and upon the member pointed out consenting to such nomination, his name is to be set aside, and unless objected to, he is to serve as a nominee.

The members who are thus nominated are not less liable to be objected to, than those who are chosen by lot; nor is it compulsory upon them to serve, if they are not inclined to consent to it; Members proposed as nothe above statute, by § 12 (a), having provided minees may be that either of the members so nominated should the same be set aside for any of the same causes as those chosen by lot; chosen by lot, or on requiring it should be ex- cused on recused from serving on the select committee; In which cases in which cases, the party nominating the mem- minating is to ber so set aside or excused is to nominate another in his stead, and so as often as the case (See also, post, 283, 284.) shall happen, until his nominee is admitted.

set aside for causes as those or may be exthe party no. nominate

It may happen that the parties do not, either

(a) For this stat. see ante, 10.

Sect. 10.
Petitions in general.

If parties do
not appoint a
nominees, such
nomination to
be supplied
by lot.
Members
drawn in such
case may be set
aside, or excused, as the
other fortynine.

or both, avail themselves of their power of the appointment of a nominee or nominees. Wherefore the stat. 10 Geo. 3. c. 16. § 15. (a) directs, that if the petitioners or sitting members, or their agents, shall not respectively nominate a member then present, who shall be admitted according to the directions of that act, the want of such nomination is to be supplied by drawing out, instead thereof, the name of one or two members as the case shall require, who are to be drawn by lot in the same manner, and subject to the like objections and excuses as the forty-nine already drawn by lot, and are to be added to the lists of the forty-nine members, and are to be liable to be struck off in the same manner; leaving always the number of fifteen members in the whole, and no more, as a select committee.

If there be more than two parties concerned in an election petition, the law as before stated would be insufficient to secure to each the advantage contemplated by the above provisions. Such case, however, was speedily provided for by the legislature.

Where there

By the stat. 11 Geo. 3. c. 42. § 6. (b) if, on a

⁽a) For this stat. see ante, (b) For this stat. see ante, 11.

complaint by petition of an undue election or return, there shall be more than two parties be Petitions in fore the house on distinct interests, or complain-general. ing or complained of upon different grounds, distinct intewhose right to be elected or returned may be affected by the determination of the select committee, in such case neither of such parties right to be (there being more than two) is to be permitted turned may be to name a member to be added to those drawn by lot; but as soon as the list of thirteen members shall be returned by the parties to the party, but the house, such thirteen members are to withdraw, and are, by themselves, to choose two members then present in the house, whose names shall and to report not have been drawn, to be added to the thir- an hour to the teen (a); and are, within one hour from the time of their withdrawing, to report the names of such two members to the house; which two mem-may be set bers are to be liable to be set aside, on the like cused, as under objections for which nominees may be set aside (Ante, 281.) by virtue of the stat. 10 Geo. 3. c. 16.—And in case such two members, or either of them, shall be And thirteen set aside for any of such causes, then such thir-choose in their teen members are to choose one or two other two members members, as the case shall require, until two against whom

two parties on rests, or complaining or complained of on different grounds, whose affected by determination of select committee, neither thirteen members are to choose two members as nominees, them within

Such members aside, or ex-10 Geo. 3. c. 16.

members to room, until are chosen, there are none of the objec-

chester, 18th February, 1813, rate and distinct from each two parties before the house, pointed as above. 68 Journ. and the interests of the two

⁽a) For an instance, see Col- sitting members being senawhere there were more than other, the nominees were ap-

Sect. 10.

Petitions in general.
Geo. 3. c. 16.
(ante. 274.)
or any of the objections for which the members chosen by lot may be set aside.

members are chosen, against whom none of the objections to nominees mentioned in the 10 Geo. 3. c. 16. shall be taken and allowed.

The stat. 53 Geo. 3. c. 71. § 20. (a) alludes, by its recital, to this latter provision, and enacts, that either of the members so chosen shall and may be set aside for any of the same causes as those chosen by lot.

The names of the two members thus appointed are thereupon by the above clause of the stat. 11 Geo. 3. c. 42. (§ 6.) to be added to such list of the thirteen members; and the fifteen are to be sworn at the table, and they are to be the select committee.

Another case which required to be provided for, was, that of the appointment of nominees, in the case of the non-appearance of the sitting member, or other party opposing the petition at the time appointed for taking it into consideration.

If within an hour after the time for calling in the parties, the sitting

With this view the stat. 28 Geo. 3. c. 52. § 14. (b) has directed that if within one hour after the time fixed for calling in the respective par-

⁽a) For this stat. see ante, (b) For this stat. see ante, 62.

ties, their counsel or agents, for the purpose of proceeding to the appointment of a select com- Petitions in mittee, the sitting member or members, or other general. party or parties opposing the petition, shall not members opappear himself or themselves. or by his or their tition, or if counsel or agents, or if at the time so appointed party before there shall be no party before the house opposing posing the pethe petition; in every case where the party op- case where the posing the petition would be empowered by the the petition would be empowered by the would be emstatutes 10 Geo. 3. c. 16. and 11 Geo. 3. c. 42. powered under to nominate one member to be added to the thir- c. 16. and 11 teen, the thirteen are, from among the persons to appoint a present in the house at the time of drawing the 15 are to choose names of the members, to choose one person to supply the place of the member to have been so nominated, in the same manner as directed by the stat. 11 Geo. 3. c. 42. where there are more than two parties on distinct interests.

posing the pethere be no the house optition, in every the 10 Geo. 3. Geo. 3. c. 42. a nominee.

And by § 15 (a), the course is to be the same So, where a where a party shall-waive his right of appointing his right of appointing appointing a a nominee (b).

party waives nominee.

The remaining provisions of the law go to regulate the time and order of choosing nomi-

(b) Great Grimsby, 16th Feb. 1813, Major General tee, 68 Journ. 163.

Loft, the petitioner, declined nominating a member to serve on the select commit-

⁽a) For this stat. see ante,

Sect. 10. Petitions in general.

nees, in cases where there are several petitions before the house at the same time, in which the nominees are to be chosen by the thirteen members.

Ante, 278.

If more than two parties before the house on distinct interests, or complaining or complained of on different grounds, the 13 members are not to choose all the other committees ballotted for on that day shall have been sworn.

If two or more committees be appointed on the same day, on petitions where there are more than two parties before the house, the committee first to have the preference in choosing nominees.

The stat. 42 Geo. 3. c. 84, after making the provision by § 4, already noticed, whereby, if the name of any member be drawn by lot upon one of such petitions, upon the declaration of either of the parties ordered to attend upon any other petition, that such member is intended to be a nominee, and upon his consent thereto, his name is to be set aside, and another drawn; by § 7(a), provides and enacts that when on a complaint by a petition of an undue election or nominees until return, there shall be more than two parties before the house on distinct interests, or complaining or complained of upon different grounds, the thirteen members returned to the house, by virtue of the stat. 11 Geo. 3. c. 42, are not to choose their nominees, until all the other select committees to be ballotted for on that day shall have been sworn:—And the same clause also provides, that if two or more committees shall ballotted for is be appointed on the same day, to decide on any petition whereon there shall so be more than two parties before the house, the commit-

(a) For this stat. see ante. 51.

tee which shall have been first ballotted for shall have the preference in choosing nominees.

Sect. 10. Petitions in general.

By the stat. 47 Geo. 3. sess. 1. c. 1. § 2. (a), Where nomiwhenever on any complaint by petition under nees, are to be any act or acts for the regulation of the trials 13 members. of controverted elections, or returns, it shall choose such happen that the thirteen members returned to nominees the house under the direction of those acts, or other select any or either of them, shall be intitled by virtue be ballotted for of any regulations or provisions on any of such where the paracts, to choose two members or one (as the case ties are to apmay require) to be added to the thirteen mem- minees, shall bers for the completion of the committee to try sworn, if such such petition, such thirteen members are not to any of them choose such members or member, until all the pleted. other select committees to be ballotted for on that day (in the appointing of which the parties before the house are to name two members to be added to the members to be drawn by lot) shall have been sworn, if such committees, or any of them, can be completed.

. nee, or nomichosen by the they are not to nominee or until all the point the nohave been committees or

And the same clause further provides, that if If two or more two or more select committees shall be ballotted to be ballotted for on the same day, for the completion of which, day, wherein the thirteen members returned to the house bersare to shall be entitled to choose two members or one nee or nomi-

committees are for on the same nees, the 13

⁽a) For this stat. see ante, 52.

Sect. 10. Petitions in general. on the committee first ballotted for are to ference in choosing, and so on successively.

member, then the thirteen members on the committee or committees which shall have been first ballotted for, are to have the preference successively in choosing such member or members have the pre- for the completion of such committee or committees.

> SECTION 11. Of reducing the ballotted list to form a select committee.

WITH respect to petitions of the first class(a):

The names of forty-nine members (exclusive of those who may have been set aside or excused) having been drawn by lot, the next proceeding is to reduce them to such number as is requisite to form the select committee, viz. to the number of thirteen exclusive of the two nominees (who shall have been added as before stated).

When 49 members shall have lot, and two ed, the door of

By the stat. 10 Geo. 3. c. 16. § 13. (b), as been chosen by soon as the forty-nine members shall have been nominees add- chosen by lot, and the two members to be added the house is to shall have been nominated, the door of the house

⁽a) For this class see ante, (b) For this stat. see ante, 10.

is to be opened, and the house may proceed upon any other business (the parties upon the Petitions of petition withdrawing.) And by § 14 (a), of the be opened, and act, on their so withdrawing, the house is to continue sitting; and the fifty-one members so other business. chosen and nominated are not to depart the then to conhouse, till the time for the meeting of the select and the 51 committee shall be fixed.

The following is the mode of reducing the number of members under the above clause of the 10 Geo. 3. c. 16. § 13. which takes place at the same time, that the door of the house is opened. Lists of the forty-nine members chosen Lists of the 49 by lot are to be given to the petitioners, their given to the counsel, or agents, and the counsel or agents for their counsel the sitting members, who are immediately to the counsel or withdraw, together with the clerk appointed to sitting memattend the select committee; and such petition- to withdraw ers and sitting members, their counsel or agents, appointed to beginning on the part of the petitioners, are alternately to strike off one of the forty-nine ginning on the until the number be reduced to thirteen.—And by the same clause, such clerk is within one hour at farthest from the time of the parties number be reduced to 13. withdrawing to deliver into the house the names Clerk to deof the thirteen members then remaining.—And names of such

Sect. 11. 1st class. the house may proceed on The house is tinue sitting. members are not to depart till the meeting of the committee is fixed.

members to be petitioners. or agents, and agents for the bers, who are with the clerk attend the committee, and bepart of the petitioners alternately to strike off one of the 49 until the

⁽a) For this stat. see ante, 11.

Sect. 11. Petitions of lat class. 13 members Such 13 memtwo nominees at the table. Their oath. administered

such thirteen members, together with the two members nominated (as before stated), are by the same clause to be sworn at the table "well within an hour. " and truly to try the matter of the petition rebers with the "ferred to them, and a true judgment to give are to be sworn " according to the evidence;" (such oath being by § 29(a) to be administered by the clerk or Which is to be clerk assistant in the same manner as the oaths by the clerk or of allegiance and supremacy are administered in the house).

The 15 so appointed are to be the select committee to try the merits of the return or election.

clerk assistant.

The fifteen members thus appointed become the select committee to try and determine the merits of the return, or election, appointed by the house to be that day taken into consideration.

Where there are more than fore the houseon distinct interests, or complaining or complained of upon different grounds, be elected or returned may reduced to 13.

In cases of petitions, where there are more two parties be- than two parties before the house on distinct interests, or complaining or complained of upon different grounds, whose right to be elected or returned may be affected by the determination ferent grounds, whose right to of the select committee, each of such parties are, by the stat. 11 Geo. 3. c. 42. § 6. (b), succesbe affected, each is to strike sively to strike off a member from the forty-nine off successively chosen by lot, until such number be reduced to from the 49 till the number be thirteen, in the same manner as is done alter-

⁽b) For this stat. see autc. (a) For this stat. see ante,

nately where there are two parties (a).—And for this purpose lists of the forty-nine members Petitions of chosen by lot are to be given to all such par- Lists of the 49 ties; and the order in which such parties are to strike off is to be determined by lot after they are withdrawn from the bar.

In cases where there are more petitions than Where there one presented complaining of a return, or the titions than omission of a return, on distinct interests, or complaining upon different grounds, the house is to determine under the stat. 25 Geo. 3. c. 84. § 12.(b), from the nature of the case, whether the returning officer or officers, or person appearing in the stead of him or them, is, together with the petitioners, to be intitled to strike off from the list of members drawn by lot, as directed by the stat. 11 Geo. 3. c. 42. in the case where there shall be more than two parties before the house, case where or whether the list is to be reduced by the parties severally presenting such petitions only.

In cases where the parties resisting the pe-petitioners tition do not appear in sufficient time, the stat. 28 Geo. 3. c. 52. § 14. (c) directs that if within

Sect 11 1st class. to be given to all such parties, and the order in which they are to strike is to be determined by

one, complaining of a return or the omission of a return, or complaining upon different grounds, the house is to determine whether the returning officer or . person appearing in his stead is, together with the petitioner, to be entitled to strike off, as in the there are more than two parties before the house, or whether the list is to be reduced by the different

⁽a) See an instance of this proceeding, upon its being stated to the house that there were more than two parties 21. on distinct interests. Col-

chester, 18th Feb. 1813. 68 Journ. 173.

⁽b) For this stat. see ante.

⁽c) For this stat. see ante, 29.

Sect. II. Petitions of 1st class.

opposing the appear within an hour after the time, or if there be no party before the house opposing the pe-tition, the place of a Party opposing the petition is to be supplied tee's clerk, who as often as it comes to his out the name standing first.

one hour after the time fixed for calling in the respective parties, their counsel or agents, for the purpose of proceeding to the appointment of a select committee, the sitting member or mem-Where parties bers, or other party or parties opposing the peopposing the petition do not tition, do not appear by himself or themselves. or by his or their counsel or agents, or if, at the time appointed, there shall be no party before the house opposing the petition, the house is to proceed to appoint a select committee, to try the merits of the petition, the names of fortynine members being to be drawn as in other by the commit-cases; but in reducing the list of such names to thirteen, the place of a party opposing the peturn is to strike tition is to be supplied by the clerk appointed to attend the committee, who, as often as it shall come to his turn, as supplying the place of the party opposing the petition, is to strike out the name, which shall then be first in the list.

The same course is to be pursued where a party waives his right of striking off.

And by the stat. 28 Geo. 3. c. 52. § 15. (a), the same method of reducing the list is to be followed whenever any party shall waive his right of striking off names from the list.

Where several petitions are to be taken into

In cases where two or more petitions are to be taken into consideration on the same day, the

Sect. 11.

Petitions of 1st class.

consideration

day, parties on

may withdraw

the committee

tion, and the turn the re-

duced list in the interval be-

tween any two ballots, and the members there-

upon may be sworn and depart.

as soon as 49 names are

stat. 42 Geo. 3. c. 84. § 6. (a) provides that the petitioners and other parties, and their counsel or agents, may withdraw from the house, as soon as the lists of forty-nine names shall have been on the same drawn, in order to form the committee for the one petition trial of such petition; and the clerk attending such committee may return the reduced list, in drawn, to form the interval between any two ballots; and the forthat petimembers remaining upon any of such reduced elerk may relists, with the two nominees, are to be sworn at the table, and may forthwith depart the house.

With respect to petitions of the second class (b):

What is herein before stated applies equally as to petitions of this class, the stat. 25 Geo 3. c. 84. § 11. (c) adopting generally all the rules and regulations, authorities and powers of the recited acts of 10 Geo. 3. c. 16. (d), or the 11 Geo. 3. c. 42. (e), with respect to select committees to be appointed under those acts or either of them.

With respect to petitions of the *third* class (f):

The effect of the stat. 28 Geo. 3. c. 52. § 2 and The like rules 3(g), is to place petitioners of this class in the classes as to

as in preceding reducing list.

(a) For this stat. see ante.

(b) For this class, see ante,

(c) For this stat. see ante,

(d) For this stat. see ante, 6.

(e) For this stat. see ante,

(f) For this class, see ante,

(g) For this stat. see ante,

Petitions of 3d class.

situation in which sitting members would have been in opposing petitions of the first class, and by the latter section, such petitioner, or petitioners, "shall be admitted as a party or parties, and be considered as such, to all intents and purposes whatsoever."

Under this general enactment, the particular rules mentioned as belonging to petitions of the former classes as to reducing the list, may be taken as applying also to this class.

Petitions of 4th class.

With respect to petitions of the fourth class (a):

The like rules as in preceding classes as to reducing list.

By the stat. 28 Geo. 3. c. 52. § 30. (b), the same rules apply as in the preceding cases, the select committee being to be appointed according to the directions of the acts of 10 Gèo. 3. c. 16. (c) and 11 Geo. 3. c. 42. (d); and such select committee is to be sworn to try and determine the merits of such petition, so far as the same relate to any question or questions respecting the right of election, for the place to which the same shall relate; or respecting the right of appointing, nominating, or choosing the returning officer or officers, who are to make return of such election: and this,

Select committee to be sworn as herein.

⁽c) For this stat. see ane. (a) For this class, see ante, (b) For this stat. see antz, 37. (d) For this stat. see ante,

coupled with the general adoption, by § 32 (a) of that act, of all the pre-existing regulations, Petitions in would give the same rules in reducing the list.

With respect to petitions in general:

It is to be observed, that a select committee, when once formed, is to be taken to be well constituted; the legislature having particularly provided, by the stat. 53 Geo. 3. c. 71. \S 18.(b), that in order to avoid and prevent all doubts respect- Committees ing the appointment of any select committee, and sworn, are under any of the acts, by reason of any of the to be legally members not being qualified to serve, every select committee which shall be appointed under and by virtue of the acts for the trial of contro-· verted elections, or any of them, is to be deemed to have been, and to be, legally appointed from and after the time of their being sworn at the table, in the usual manner.

SECTION 12. Of the meetings, sittings, and adjournments of select committees, as directed by the statutes.

WITH respect to petitions in general:

The select committee having been formed in Committee, when formed,

⁽a) For this stat. see ante, 37.

⁽b) For this stat. see ante, 62.

Sect. 12. to meet at a time to be fixed by the house;

within twenty. four hours of their appointment; or un-less a Sunday, Christmas-day, or Good Friday, intervene; and if so, within twentyfour hours, exclusive of such days.

the manner before stated, and the fifteen members composing it having been sworn, as beforementioned, the house is, by the stat. 10 Geo. 3. c. 16. § 13. (a), to order such select committee to meet at a certain time to be fixed by the such time to be house, which time is to be within twenty-four hours of the appointment of such select committee, unless a Sunday, a Christmas-day, or Good Friday, (by the effect of the stat. 28 Geo. 3. c. 52. \S 10. (b), shall intervene. In either of which cases the meeting, sitting, or adjournment of such select committee is, by the stat. 10 Geo. 3. c. 16. § 20. (c), coupled with the lastmentioned clause of the stat. 28 Geo. 3. c. 52, to be within twenty-four hours, exclusive of such Sunday, Christmas-day, or Good Friday,

Place of meeting to be a room adjacent to the house of commons.

The place of meeting and sitting of the select committee is, by the 10 Geo. 3. c. 16. § 13, directed to be some convenient room or place adjacent to the house of commons, or court of requests, properly prepared for that purpose.

As to the sittings of select committees:

Select committee to sit The stat. 10 Geo. 3. c. 16. § 19. (d) directs,

(a) For this stat. see ante, (c) For this stat. see ante, 10. 13. (b) For this stat. see ante, (d) For this stat. see ante, 13.

that the select committee shall sit every day, Sunday and Christmas-day only excepted, to which exception Good Friday is added by the effect of the stat. 28 Geo. 3. c. 52. § 10 (a).

Sect. 12. every day, Sunday, Christmasday, and Good Friday excepted.

And by the same two clauses respectively, the Select comselect committee is forbidden to adjourn for a longer time than twenty-four hours, unless a twenty-four Sunday, Christmas-day, or Good Friday, shall in- Sunday, Christtervene, without leave first obtained from the Good Friday inhouse upon motion, and special cause assigned out leave from for a longer adjournment.

mittee not to adjourn for longer than hours (unless a tervene), withthe house, upon motion, and special cause assigned.

And by the same clauses, in case the house If the house is shall be sitting at the time to which such select time to which committee is adjourned, then the business of the mittee is adhouse is to be stayed, and a motion made for a business of the further adjournment for any time to be fixed by the house, not exceeding twenty-four hours, un- for a further less a Sunday, Christmas-day, or Good Friday intervene.

sitting at the select comjourned, the house is to be stayed, and a motion made adjournment, not exceeding twenty-four hours, unless Sunday, Christmas-day, or Good Friday intervene.

And by the stat. 10 Geo. 3. c. 16. § 20. (b), coupled with the stat. 28 Geo. 3. c. 52. \$ 10. (c), Wherever Sunwherever Sunday, Christmas-day, or Good Fri-day, or Good day shall so intervene, the sitting or adjourn- vene, the sit-

day, Christmas-Friday so interting or ad-

⁽a) For this stat, see ante, 28.

⁽b) For this stat. see ante, 13.

⁽c) For this stat. see ante, 28.

Sect. 12.

journment of the melect committee is to be within twentyfour hours from the time of appointing it, exclusive of those days. Select committee not to sit until all the members, not absenton leave or excused, shall be met. If they shall not all meet of the time to which select committee is adjourned, a farther adjournment is to be made and reported, with the cause, to the house.

ment of the select committee is to be within twenty-four hours from the time of appointing or fixing the same, exclusive of such Sunday, Christmas-day, or Good Friday.

By the stat. 10 Geo. 3. e. 16. § 21. (a), the select committee is never to sit, until all the members not absent by leave, nor upon excuse to be allowed by the house, are met. case they shall not all meet within one hour after the time to which such select committee within an hour shall have been adjourned, a further adjournment is to be made and reported, with the cause thereof, to the house.

> And it will be seen that members of the committee, otherwise absenting themselves, are to be reported to the house.

> In some cases where it may be necessary to apply to the house, and the house shall happen at the time to be adjourned, a corresponding adjournment of the committee may take place.

If select committee bave ocor report to the house, in relation to their adjourn-

By the stat. 11 Geo. 3. c. 42. $\S 5.(b)$, if the secasion to apply lect committee shall have occasion to apply or report to the house, in relation to the adjournment of such select committee, the absence of

> (b) For this stat. see ante, (a) For this stat. see ante,

the members thereof, or the non-attendance or misbehaviour of witnesses summoned to appear, or appearing before them, and the house shall be then adjourned for more than three days, such select committee may also adjourn to the of witnesses, day appointed for the meeting of the house.

ment, the absence of members, or nonattendance or misbehaviour and the house shall be adjourned, committee may adjourn to the for the meeting

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It would be attended with great disadvantage, day appointed both to the house and to the parties concerned, of the house. that when a select committee shall have entered upon the merits of a petition, their proceedings should be rendered abortive by the prorogation of parliament.

In order to provide for which case, the stat. If parliament 28 Geo. 3. c. 52. § 33. (a) directs, that whenever it shall happen that parliament shall be pro- mittee is sitrogued, while any select committee shall be trial of a petisitting for the trial of any petition, and before they shall have reported to the house their determination thereon, the committee is not to be dissolved by such prorogation, but is to be adjourned to twelve o'clock on the day immediately following that on which parliament shall again meet for the dispatch of business (Sundays, Good Friday, and Christmas-day always excepted); and all former proceedings of such day, and Good Friday ex-

be prorogued whilst any select comting for the tion, and before they shall have reported mination, committee is not to be dissolved thereby; but is to adjourn till the day following that on which parliament is to meet for dispatch of business, Sundeys, Christmascepted;

(a) For this stat. see ante, 38.

former proceedings to be of force; committee then to continue to sit from day to day till their determination is reported.

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committee are to remain and continue to be of the same force and effect, as if parliament had not been so prorogued; and such committee is to meet on the day and hour to which it shall be so adjourned, and is thenceforward to continue to sit from day to day, in the manner provided in the acts 10, 11, and 25 Geo. 3. and that act, until they shall have reported to the house their determination on the merits of the petition.

Section 13. Of the proceedings of select committees, as directed by the statutes.

Petitions of 1st and 2d class. WITH respect to petitions of the *first* and second classes (a):

Committee to try the merits of the return,; or election, or both, and to determine by a majority of voices, whether the petitioners, sitting members, or either, of them duly elected, The general duty of a select committee, under the stat. 10 Geo. 3. c. 16, § 18. (b), is to try the merits of the return, or election, or both, and to determine by a majority of their voices, whether the petitioners, or the sitting members, or either of them, were duly returned or elected, or

⁽a) For these classes, see ante, 82, 83. (b) For this stat. see ante, 12.

whether the election were void, which determination is to be final between the parties to all Petitions of intents and purposes; and the house, on being lst a class. informed thereof, by the chairman, under that or whether statute is to order the same to be entered on Determination their journals, and give the necessary directions and to be enfor confirming or altering the return, or for tered on the journals. issuing a writ for a new election, or for carrying such determination into consideration, as the case may require.

1st and 2d election void. to be final, &c.

With respect to petitions of the third class (a): Petitions of 3d

By the stat. 25 Geo. 3. c. 84. § 10. (b), the Committee select committee is to be appointed according to the directions of the stat. 10 Geo. 3. c. 16. (c), person named in petition, and 11 Geo. 3. c. 42. (d): which committee is to ought to have been returned, try and determine, whether any, and which of or whether a new writing the writing the median which of or whether any and which of or whether a the person or persons named in the petition, ought to have been returned, or whether a new writ ought to issue; which determination is to the house to be final, to all intents and purposes, and the cessary directions. house, being informed thereof by the chairman. is to order the same to be entered in their

to try whether any, and which to issue, which determination to be final, and give the ne-

⁽a) For this class, see ante,

⁽b) For this stat. see ante,

⁽c) For this stat. see ante,

⁽d) For this stat. see ante. 16.—This statute, it has been seen, only adds some further directions applicable in the same cases, as under the 10 Geo. 3. c. 16.

and 4th class.

journals, and give the necessary directions for Petitions of 3d ordering a return to be made, or for altering the return, if made, or for issuing a writ for a new election, or for carrying such determination into execution, as the case may require.

With respect to petitions of the fourth class(a):

Committee to try right of election, or of appointing returning officer or officers:

Under the stat. 28 Geo. 3. c. 52. § 30.(b), the select committee is to try and determine the merits of the petition, (as far as the same relate to any question or questions, respecting the right of election, or the right of appointing, nominating, or choosing the returning officer or officers,) according to the directions of the acts therein cited, namely, the 10 Geo. 3. c. 16. (c), 11 Geo. 3. c. 42. (d), and 25 Geo. 3. c. 84 (e). And the determination of such select committee, on such question or questions, is to be entered on the journals of the house, and is to be held and taken to be final and conclusive, in all subsequent elections for the place to which the same shall relate (the previous provision of the 2 Geo. 3. c. 24. § 4. as to votes being deemed to be legal, which have been so

the determination thereupon to be final.

⁽a) For this class, see ante, (d) For this stat. see ante, (b) For this stat. see ante,

⁽e) For this stat. see ante, (c) For this stat, see ante, 6.

declared by the last determination in the house of commons, being repealed by § 31 (a) of the Petitions of same act.)

By the stat. 28 Geo. 3. c. 52. \S 32. (b), all the rules, regulations, authorities, and powers, prescribed or given by the acts 10 Geo. 3. c. 16. (c), 11 Geo. 3. c. 42. (d), 25 Geo. 3. c. 84. (e), or by that act, to select committees for the trial of controverted elections or returns, are to be in force with respect to committees appointed for the trial of such questions of right, in as full and ample a manner, as if the same were therein repeated, and particularly and especially enacted concerning such select committees.

All the regulations, in other cases, adopted for the trial of such petitions.

As to petitions in general:

The following provisions operate either originally or by adoption as to petitions of all classes.

The first proceeding of the select committee Committee to is to elect a chairman; the stat. 10 Geo. 3. c. 16. 17. (f) directing them to make such choice on

(a) For this stat. see ante, (d) For this stat. see ante. (b) For this stat. see ante, (e) For this stat. see ante, (c) For this stat. see ante, (f) For this stat. see ante. Sect. 13.
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their meeting from among such of the members thereof as shall have been chosen by lot; in which election if there be an equality of voices, the member whose name was first drawn in the house is to have a casting voice. So, likewise, if there should be occasion to elect another chairman, on the death or necessary absence of the chairman first elected.

His duty.

The chairman, so elected, presides in all meetings of the select committee, and all reports, which are to be made to the house, in respect of the matters before them, are made by him.

Chairman to have a casting voice.

And by the stat. 10 Geo. 3. c. 16. § 27. (a), in all questions arising in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition, as well as all other resolutions, wherein the voices shall be equal, the chairman is to have a casting voice.

Committee to be attended by a short-hand writer: It is usual under the authority of the stat. 42 Geo. 3. c. 84. \S 8. (b) that the select committee should be attended by a short-hand writer, that statute enacting that every such committee may be attended by a person skilled in the art of

⁽a) For this stat. see ante, 15.

⁽b) For this stat. see ante, 51.

writing short-hand, who shall be especially appointed by the clerk of the house of commons Petitions in for the time being, and sworn by the chairman who is to be faithfully and truly to take down in short-hand sworn. the evidence adduced before the committee, and from day to day, as occasion may require, to transcribe, or to cause the same to be transcribed, in words at length, for the use of the committee.

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Such short-hand writer is therefore sworn accordingly, before the select committee proceed to business.

The next duty of the select committee is to Is committee of ascertain whether or not the merits of the petition before them turn in any degree upon any any question question respecting the right of election, or of right of elecappointing the returning officer or officers for pointing a rethe place to which the petition relates. In either of which cases, by the stat. 28 Geo. 3. c. 52. § 25. (a), if the committee shall be of opinion that such merits wholly or in part depend upon any such question, they are to require of the counsel tend respecor agents for the several parties, or if there be none such before them, the parties themselves, to deliver to the clerk of the committee, statements in writing of the right in question for which they respectively contend. '

opinion that merits of petition turn upon respecting tion or of apturning officer or officers, they are to require from the parties statements in writing of the rights for which they contively.

These preliminary arrangements being made,

(a) For this stat. see ante, 35.

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the select committee proceeds upon the trial of the case before them, in the course of which many practical questions may arise, the consideration of which will belong to another chapter.

When committee deliberate, room to be eleared.

It may be proper here to mention, that by the stat. 10 Geo. 3. c. 16. § 27. (a), whenever the select committee shall think it necessary to deliberate amongst themselves, upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the petition; as soon as the select committee shall have heard the evidence and counsel on both sides relative thereunto, the room or place wherein they shall sit is to be cleared, if they shall think proper, while the members of such select committee consider thereof.

Questions and resolutions to majority of voices.

And by the same clause, in such questions be decided by a and resolutions, as well as in all other resolutions of the select committee, the decision is to be by a majority of voices.

> SECTION 14. Of the statutory provisions with respect to witnesses attending before select committees.

WITH respect to petitions in general: There are several statutory provisions with re-

⁽a) For this stat. see ante, 15.

spect to the attendance of witnesses before select committees, which by adoption apply in the cases Petitions in of petitions of all classes.

By the stat. 10 Geo. 3. c. 16. § 18. (a), au- committee thority is given to a select committee to send persons, pafor persons, papers, and records; and to examine cords, and may all the witnesses who shall come before them nesses on oath. upon oath.

Obedience to such summons is enforced by the In cases of perstat. 10 Geo. 3. c. 16. § 26. (b), whereby if any person summoned by the select committee shall committee by disobey such summons, the chairman of such com- may report mittee, by their direction, may at any time during house, for the the proceedings report the same to the house for their authority the interposition of their authority or censure.

sons disobeying summons, chairman of their direction them to the interposition of or censure.

And such obedience is still further enforced committee by the stat. 28 Geo. 3. c. 52. § 16. by which mit such perif any person summoned to attend a select committee, by the warrant of the speaker, or by order of the committee, shall disobey such summons, the committee have power by warrant to be signed by their chairman, and directed to the

may also comsons by the warrantoftheir chairman to the , custody of the serjeant at arms, or his deputy or deputies, for any time not exceeding 24 hours, if the house be sit-

(a) For this stat, see ante,

For the form of the speaker's warrant or summons to a witpess to attend before a select or papers, &c. App. Dxix. committee, see App. Dxvii.

The speaker's warrant for 30.

inspection of papers, &c. App.

The speaker's warrant for production of private books

(b) For this stat. see ante.

general. ting, or if not, for a time not exceeding 24 hour to which the house is adjourned.

serieant at arms, or his deputy or deputies, to commit such person (not being a peer of the realm or lord of parliament) to the custody of such serjeant, without bail or mainprize, for any hours after the time not exceeding twenty-four hours, if the house shall then be sitting, or if not, then for a time not exceeding twenty-four hours, after the hour to which the house shall be adjourned.

Witnesses to be sworn by the clerk attending the committee.

By the stat. 10 Geo. 3. c. 16. \S 29. (a), the oaths directed by that act to be taken before the select committee are to be administered by the clerk attending such select committee:

Persons guilty of perjury before committees to be liable to the pains and penalties of perjury.

And by the same clause, all persons who shall be guilty of wilful and corrupt perjurbl ih any evidence which they shall give before the house, or the select committee, in consequence of the oath which shall be taken by the direction of that act, are on conviction thereof to incur and suffer the like pains and penalties to which any other person convicted of wilful and corrupt perjury is liable by the laws and statutes of this realm.

Witnesses provaricating may be dealt with as those refusing to attend.

If any witness, when before the select committee, shall prevaricate, or otherwise misbehave in giving or refusing to give evidence, he may be dealt with, under the statutes 10 Geo. 9. c. 16.

⁽a) For this stat. see ante, 15.

or 28 Geo. 3. c. 52. § 16. respectively, as before mentioned in the cases of witnesses refusing to Politions in grieges and or mainmine for at the

The questions which have arisen with respect to evidence in cases before select committees will form the subject of subsequent inquiry.

Shorion 15. Of the attendance of members put upon a select committee; and herein of the consequences of their absence.

... WITH respect to petitions in general:

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The following provisions apply originally, or by adoption, with respect to petitions of all classes:

By the stat. 10 Geo. 3. c. 16. § 21. (a), no No member is member of a select committee is to be allowed self from select to absent himself from the same without leave without leave without leave obtained from the house, or an excuse to be without excuse allowed by the house at its next sitting, on special cause shewn and verified upon oath.

of the house, or to be allowed by the house at its next sitting.

And by $\S 22(b)$ of the same act, the chairman of the select committee is, at the next meeting

(a) For this stat. see ante, (b) For this stat. see ante, 13.

: :

Sect. 15. Petitions in general. Chairman of committee to report names of members who have been absent, who are to be directed to atlend the house at its next sitting, and to be ortody, and otherwise punished or house; unless on oath that such member was prevented by sudden accident or necessitv. If more than.

two members

absent, committee to ad-

journ.

of the house, to report to them the name of every member thereof who shall have been absent therefrom without such leave or excuse (a); and such member is to be directed to attend the house at its next sitting, and is to be ordered to be taken into custody of the serjeant at arms, for such neglect of his duty, and otherwise punished or censured at the discretion of the dered into cus- house; unless it shall appear to the house, by facts specially stated and verified upon oath, censured by the that such member was by a sudden accident, nouse; unless it shall appear or by necessity, prevented from attending such select committee.

> The necessity of thus enforcing the attendance of members is imperious, inasmuch as the nonattendance of a very small proportion of them will altogether interrupt the proceedings, it being enacted, \S 23 (b) of the same act, that if more than two members of the select committee are on any account absent therefrom, such committee is to adjourn, and so from time to time until thirteen members are assembled.

(a) For reports to the house of the absence of a member, see Journ. 12th Feb. 1813; and as to the illness of members serving upon committees, Haslemere, 19th Feb. 1813. 68 Journ. 182. Weymouth and Melcombe Regis, 22d Feb. 1813. 68 Journ. 194. Cardigan, 23d March, 1813. 68 Journ. 340.

(b) For this stat. see ante, 14.

The stat. 10 Geo. 3. c. 16. § 24. (a) had provided, that in case the number of members Petitions in able to attend the select committee should by death or otherwise be reduced to less than thirteen, and should so continue for the space of less than 13. three sitting days, such committee was to be dissolved, and another chosen to try the matter of the petition; and the proceedings of the former select committee were to be void and of no effect (b).

Committee fo merlydissolve if reduced to

This provision however is qualified by the subsequent statute 28 Geo. 3. c. 52. § 17. (c), by which this strictness is somewhat relaxed, after the early meetings of the select committee.

The latter act provides, that when they shall When a com mittee shall have sat for business fourteen days, exclusive of have sat for

(a) For this stat. see unte,

14. (b) This latter provision was dispensed with in the instance of the Bedfordshire committee, 1775, where the select committee having made considerable progress, was reduced to thirteen, and where, if it had been dissolved, it would have produced great inconvenience and injury to the parties; in order to provide for the possibility of which the legislature interposed by the stat. 31.

25 Geo. 3. c. 17, whereby, in the event of the committee being, by the indisposition or death of any of its members. further reduced to eleven, the house was empowered, upon application to them for that purpose, to authorize and direct the committee to proceed in the matters referred to them, and to report upon the same, and their report was to be as valid as if the committee had not been so reduced.

(c) For this stat. see ante,

Sect. 15. Petitions in general. days, exclusive of the days on which they shall have adjourned on account of the absence of anv member, and of Sunday, Christmas day, or Good Friday, if not less than 12 present. committee not to be dissolved by rea- ting days. son of the absence of members, unless it be reduced below 12 for three successive days. And if the committee shall have sat for business for 25 days, they may proceed if not reduced below 11 for three successive days.

those days, on which they shall have adjourned on account of the absence of any member, and of Sunday, Christmas-day, or Good Friday, they may proceed to business, if not less than twelve be present.—And that in such case the committee is not to be dissolved by reason of the absence of the members, unless the number of members able to attend the same shall, by death or otherwise, be unavoidably reduced to less than twelve, and shall so continue for the space of three sitting days.

And by the same clause, if the committee shall have sat for business twenty-five days, they may proceed to business, if not less than eleven members be present:—and in such case the committee is not to be dissolved by reason of the absence of the members, unless the number of members able to attend shall be reduced, as in the former case, to less than eleven, and so continue for three sitting days.

No determination to be made nor question proposed unless 13 members present. No member to vote on such determination or other question or resolu-

It had also been provided, by the stat. 10 Geo. 3. c. 16. § 28. (a), that no determination of a select committee should be made, nor any question proposed, unless thirteen members should be present; and that no member should have a

⁽a) For this stat. see ante, 15.

vote on such determination, or any other question or resolution, who should not have attended Petitions in during every sitting of such select committee. But this is in effect modified by the above clause not have atof 28 Geo. 3, c. 52. § 17.

tion who should tended every sitting. Ante, 811.

SECTION 16. Of the reports of select committees to the house; of their report, that a petition is frivolous or vexatious, of the consequences as to costs, and of the recovery thereof.

SELECT committees in the course of their proceedings have occasionally to report to the house, as has been seen, with regard to the attendance of members, the conduct of witnesses, or upon various other grounds. And when the trial of the petition is finished, it becomes their duty to report the result, in the shape of their determination, by their chairman to the house.

With respect to petitions of the first, second, Petitions of 1st, 2d, and 3d and third classes (a):

This report is either general, as that the person whose election is in question is or is not duly returned or elected, or that the election is

(a) For these classes, see ante, 82, 83.

Petitions of 1st, 2d, and 3d class.

In what cases select committees to report specially.

or is not void, under the stat. 10 Geo. 3. c. 16. § 18.(a), (and that of 25 Geo. 3. c. 84. § 11.(b), by adoption).—Or, it contains special matters, under the stat. 10 Geo. 3. c. 16. § 25.(c), whereby, if the select committee shall come to any resolution other than a determination mentioned in that act (that is, such as have been just stated), they are, if they think proper, to report the same to the house, for their opinion, at the same time that the chairman of such committee shall inform the house of such determination; and the house may confirm, or disagree with, such resolution; and make such orders thereon as to them shall seem proper.

The subject matter of such special reports depends upon various grounds, and is to be collected under the different heads, with which such matter is connected. In the following case a special report is particularly directed.

Where select committee of opinion that the merits of a petition depend upon any question or onesIt has been seen that whenever a select committee shall be of opinion that the merits of a petition wholly or in part depend on any question or questions which shall be before them re-

⁽a) For this stat. see ante, (c) For this stat. see ante, 12.

⁽b) For this stat. see antc,

specting a right of election, or of appointing returning officer or officers, they are to require Petitions of statements from the parties as to the rights for which they contend.—In such cases, by the stat. tions respects 28 Geo. 3. c. 52. § 25. (a), they are to come to election, or of distinct resolutions on such statements, and are, at the same time that they report their final de-being in such termination on the merits of the petition, to report to the house such statement or statements, to the rights together with their judgment with respect there- contend, and to:—Which report is thereupon to be entered in the journals, and notice thereof is to be promulgated by the speaker, and gazetted according to the directions of that clause, together with nation with the 53 Geo. 3. c. 71. \S 17 (b).

1st, 2d, and 3d ing right of appointing returning officer or officers, they cases to require statements of the parties as for which they to come to distinct resolutions thereupon, and to report their final determitheir judgment with respect thereto.

Such report to be entered in

With respect to petitions of the fourth class (c): the journals.

The report is necessarily of a special nature, Report is nethe stat. 28 Geo. 3. c. 52. § 30. (d), directing cial. that the committee shall try and determine the merits of the petition, so far as the same shall relate to any question respecting the right of election, for the place to which the petition shall relate, or respecting the right of appointing,

⁽a) For this stat. see ante,

⁽b) For this stat. see ante,

⁽c) For this class, see ante,

⁽d) For this stat. see ante,

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nominating, or choosing the returning officer or officers, who are to make return of such election.

As to the report of a select committee that a petition is frivolous or vexatious, and the consequences as to costs:

Petitions in general.

With respect to petitions in general:

It will not be necessary, in the remainder of the section, to discriminate between petitions of the different classes. The first provisions which will be mentioned depend upon the stat. 28 Geo. 3. c. 52. § 18. (a), and these apply in the cases of petitions of the first, second, and third classes (b). The same provisions were afterwards imparted, by the adoption of the same statute, § 32 (c), to the cases of petitions of the fourth and fifth classes (d).

What is about to be stated is to be taken therefore as applying to petitions of all classes.

. With a view to prevent the parties in election petitions from contending in support of cases

(a) For this stat. see ante, (c) For the clause, see ante, 32.

(b) For these classes, see (d) For these classes, see ante, 82, 83.

affording no reasonable prospect of success on the one side, or from maintaining an opposition Petitions in upon grounds obviously untenable upon the other, and thus harassing the opposite party with unnecessary trouble and expense, the law has made some very salutary provisions, the foundation of which seems to have been laid in the resolutions of the house above a century back(a).

With respect to petitioners:

The stat. 28 Geo. 3. c. 52. § 18. (b) directs, select comthat the select committee, at the time that they they report report to the house their final determination on the merits of the petition, shall also report to the house whether such petition did or did not appear to them to be frivolous or vexatious.

mittee, when their determination on the merits of a petition, are also to report whether the petition appeared to them frivolous or vexatious.

By the stat. 28 Geo. 3. c. 52. § 19. (c), whenever any select committee shall report to the house, with respect to any petition, that the petition apsame appeared to them to be frivolous or vexa- frivolous or

Wherever select committee report that peared to them

(a) 'See the resolutions of the 31st October, 1705, 10th November, 1707, and 22d November, 1703, viz. "That where the house shall judge any petition touching elections to be frivolous and vexatious, the house will order

satisfaction to be made to the person petitioned against." 15 Journ. 6. Ibid. 395. 16 Journ. 6.

(b) For this stat. see ante,

(c) For this stat. see ante,

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vexatious, the parties opposing petition to be entitled to costs.

tious, the party or parties, if any, who shall have appeared before the committee, in opposition to such petition, are to be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expenses which such party or parties shall have incurred in opposing the same.

The above provisions apply to petitioners only; there are, however, corresponding provisions which go to fix other parties with costs, which will presently be shewn.

It is now necessary to examine the cases in which the application of these provisions has been agitated, and to observe the grounds which have or have not led to a determination and report, that a petition was frivolous or vexatious.

The general nature of the cases in which committees have resolved petitions to be frivolous and vexatious, has been, either; where it did not appear that the petitioner ever had any evidence wherewith to support his petition, but, after awaiting the result of another petition in the same case upon that being withdrawn, he also withdrew; or, where the case put forward by the petitioner was perfectly untenable in

point of law, although he acted under the advice of counsel in petitioning, and withdrew without Petitions in offering evidence, on discovering that the law was against him; or, where there have been heavy charges against the returning officers, and no evidence was offered in support of them; or, where the only charge in the petition, in support of which any evidence was offered, regarded the right of election, and the right so insisted upon was in opposition to a determination of the house of commons; or, where a petition contained charges of bribery and treating against the sitting members, and of misconduct against the returning officers (although the sitting members did not press for costs); or where no evidence was offered in support of the petition, although it appeared that two witnesses, one of whom was shewn to be material (a), had died since the petition was presented, and although notice was given to the sitting member that the petitioner would not oppose his right to the seat; or, where no evidence was offered in support of the petition; and this even under circumstances which made it impossible but that the sitting member must have been aware

⁽a) But see the case of where the petition was not so Honiton, post; where five of voted. the most material of the pe- See also the case of Evesham, titioner's witnesses died, and 1803, post.

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of the petitioner's intention not to offer evidence.

The case of the county of Sutherland, in which one petition was resolved to be frivolous and vexatious, and in which another petition was resolved not to be so, will be stated in its proper place (a).

2 Fras. 236. Where the peferred under sel, upon the notion that an election holden officer de facto, but not de jure, would be void; but no evidence was offered in consequence of its being discovered that the wise, it was holden frivolous and vexatious.

Bodmin, 1792.—The petition complained of tition was pre- the election and return as having been holden and advice of coun- made by a person who was not the lawful mayor, but who had usurped the office; and as being by a returning therefore void. The petitioner's counsel stated that by the charters which regulate the corporation of the borough, the presence of the mayor was necessary in the election of a successor to his office; but the person who was chosen mayor vered that the law was other. in 1787 not attending at the day of election in 1788, the corporation was unable to proceed, and was destitute of that officer at the close of the year: an application on that account was made to the court of King's Bench, and a mandamus obtained for electing a mayor; but as all the persons required by law did not even then assemble, the office remained vacant till the 3d of June 1790, on which day seventeen persons out of thirty-seven assembled; several of these protested against the proceedings of the meeting.

but the rest elected Mr. Hext mayor, under a radical defect. A process of quo warranto was Petitions in instituted against him, and was then at issue: but as he filled the office of mayor de facto, though not de jure, he (the petitioner's counsel) then understood it to be the law of parliament (though he had formerly given an opinion the other way), that Hext might act as returning officer, and should therefore declare on the part of his clients that although they might possibly litigate the point with some chance of success, they did not intend to bring forward evidence to substantiate the allegations of the petitions, finding that they were mistaken in point of law. Hereupon the counsel for the sitting members moved the committee that the petitions might be reported frivolous and vexatious. But the counsel for the petitioners stated that their clients had acted upon the advice of counsel, and that they desisted the moment they were convinced of their The committee reported the petitions frivolous and vexatious.

Tewkesbury, 12th October, and 20th February, 1797.—The petition of Mr. Moore and Mr. charge against Francis contained a heavy charge against the officers, which! returning officers (the bailiffs), which the pe- on the first day titioners abandoned on the first day of the trial. This the committee determined to be frive- frivolous and VOL. II.

1 Peck. 146. Where the petition contained a heavy the returning was abandoned of trial, the petition was holden so far

vexatious.

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lous and vexatious, as far as regarded such charge.

1 Peck. 307. 334. Where the petition contained many allegations, in respect of none of which evidence was offered, except as to one which bore upon the right of election, and in respect of which there had been a determination of the house of trary to the right insisted upon by the petitioner, the petition was holden frivolous and vexatious.

East Grinstead, 1803.—Mr. Frost, in his petition, alleged, 1. That the right of election in East Grinstead is in the inhabitants paying scot and lot, as well as in the freeholders of the borough: 2. That a majority of legal voters polled for the petitioner: 3. That the returning officer admitted several illegal, split, and occasional votes in favor of the sitting members, and rejected many legal votes tendered in favor of the petitioners: and, 4. That the sitting members commons, con- had procured their return by many undue, illegal, and unwarrantable practices.

> The petition of the electors contained allegations nearly similar.

At the trial of the cause, the petitioners abandoned the allegations of the right of election being in the inhabitants, and of corruption in the sitting members, and but slightly insisted on the misconduct of the returning officer, in not requiring that the voters should produce their deeds: and they confined themselves, with this one exception, solely to the objection of occasionality, which they attempted to apply to all the burgage tenants who had voted for the sitting members.

One burgage tenant only had voted for the petitioner.

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When the evidence was closed on the part of the petitioner, the counsel for the sitting members, after commenting thereupon, concluded by expressing a hope that the petitions would be voted to be frivolous and vexatious; urging the following as the grounds of such application: first; because of the many allegations contained therein, so few had been attempted to be supported by any sort of evidence; secondly, because the claim of the right of election in the inhabitants was in direct hostility to a clear and well-known determination by the house of commons to the contrary (which they shewed from the journals); thirdly, because the charge against the returning officer was equally groundless, and contradicted by the acknowledgment of the petitioner himself at the election; fourthly, because the characters of the sitting members had been attacked, with as little foundation, by accusations of corrupt, illegal, and unwarrantable practices: that it had been attempted to publish these calumnies under the form of a petition to the house of commons. That in the two last particulars, therefore, the petitions might most properly be called vexatious, and in all respects frivolous; for that the only point relied upon had been decided other-

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wise so many times, and the law upon the subject had been so firmly settled, that this attempt could only have proceeded from a desire to harass and disturb persons in the enjoyment of their lawful rights, and not from any reasonable hope of succeeding in an attempt either to seat the petitioner, or to avoid the election. committee, after holding that the sitting members were duly elected, decided that the petitions were frivolous and vexatious.

1 Peck. 469. Where a petition contained charges of bribery, treating, and undue practices, against the sitting members, and of misconduct in the returning officer; but the petitioner offered no evidence in support of them. and gave no. reason for so tition was resolved to be frivolous and vexatious. though the sitting memany claim to such resolution.

And in the case of Bishop's-Castle, 1803.— The petition of Mr. Kinchant contained charges of bribery, treating, and undue practices against the sitting members, and of misconduct in the returning officer, and a claim of the majority of legal votes in favour of the petitioner.—At the first sitting of the committee, the counsel for the petitioner informed them, that he should call no witnesses in support of the petition; and the counsel for the sitting members expressed themdoing; the pe-selves well satisfied with his conduct in forbearing to give them further trouble, and renounced any right they might have to desire that the counsel for the petition might be voted frivolous and vexations. bers renounced It is not stated, in the report of this case, that any previous notice had been given by the petitioner of his intention to abandon his petition.

No reason was assigned for not producing any evidence.—The committee (after resolving Petitions in that the sitting members were duly elected) further resolved, that the petition was frivolous and vexatious (a).

Midhurst, 1804.—The petitioner, Mr. Holt 2 Peck. 146. White, stated in his petition, that Mr. Turnor, the dence was sitting member, was not duly qualified to sit in port of the parliament; and that he had been guilty of holden frivobribery and treating; and that the petitioner atious, alhad the legal majority of votes, and should have peased that been returned; and he also complained of the one of whom misconduct and partiality of the returning officer, was proved to be material, but he declined producing evidence before the had died since the petition committee in support of these allegations.—The was presented, although nocommittee was appointed 4th February, 1804, to the sitting and the only question was, whether or not the member, that petition should be voted frivolous and vexatious. would not op--The petitioner, in order to induce the com- to the seat. mittee not to come to such a resolution, proved the death of a person who was stated to be a material witness, in March, 1803; and, further, that the sitting member had been apprized by a notice on the 25th January, 1804, that it was the intention of the petitioner not to oppose his right to the seat .- It was also alleged, that an-

Where no evigiven in suplous and vexthough it aptwo witnesses. was proved to pose his right

(a) But see the case of 1803, Evesham, 1803, and In-Shaftesbury, 1803, Penryn, verness, 1803, post, 329. 344.

Petitions in general.

other witness had died, by whose death the petitioner had been prevented from proving some particular transactions at the time of the elec-It was not stated what those transactions were.—The committee, after deciding that the sitting member was duly elected, determined the petition to be frivolous and vexatious.

2 Peck. 257. Where no évidence was offered in support of the petition, it was resolved to be frivolous and vexatious.

Hereford, 7th Dec. 1802, 28th Nov. 1803, and 28th Feb. 1804. The petitioners produced no evidence in support of their petition. Mr. Scudamore, and Mr. Symonds, the sitting members, were declared to be duly elected, and at the instance of their counsel, the petition was resolved to be frivolous and vexatious.

2 Peck, 255. Same point.

The petitioners brought for-Malden, 1804. ward no evidence in support of their petition.-The sitting members, Mr. Strutt and Mr. Western, were reported to be duly elected. petition was determined to be frivolous and vexatious (a).

And, in the following case, although the sitting members were fully apprized of the inten-

tion was presented by certain electors against the election being brought to support any other resolution.

(a) Coventry, 1804. A peti- the allegations thereof, Mr. Moore was reported to be electors against the election duly elected. 2 Peck. 273. of Mr. Moore. No evidence But the report does not state tion of the petitioners to offer no evidence, the committee came to the same determination.

Petitions in general

Ilchester, 29th March, 1804.—A motion had 2 Peck. 274. been negatived, for discharging the order for taking the petition into consideration, and a committee had been appointed on the 20th of The counsel for the sitting member and where no tice had been April. admitted that a notice had been given to him of given to the the petitioner's intention not to give any evi-berthat no dence in support of his petition; and (no evidence be offered in being offered accordingly) he left it to the com- petition, it mittee to decide as they should think proper upon less, voted the question of costs.—The petition was voted vexatious. frivolous and vexations.

Where a motion for postponing the petition had been made and negatived. and where nositting memevidence would support of the was, neverthefrivolous and

On the other hand, the cases in which petitions have been resolved not to be frivolous or vexatious, have been, either where several of the most material witnesses died after the petition was presented, and before the hearing, and timely notice was given to the sitting member to prevent his incurring any expense in preparing for his defence; or, where no evidence was offered in support of the petition, and previous notice was given to the sitting members, (there being however in this latter class some contrariety of decisions); or, where the election took place pending a petition of appeal, wherefore the right of election was uncertain.

Sect. 16. Petitions in general. 2 Fras. 247. Where five of the most material of the petitioner's witnesses died between the time of presenting the petition and the hearing. and of whose death the petitioner was ignorant, when the petition was renewed, (it being a renewed petition) notice was given to the sitting member of the intention not to offer evidence; the petition was holden not frivolous or vexatious.

Honiton, 1792.—The counsel for the petitioner stated, that the evidence which his client had to produce had been laid before him, and he had thought the case a very proper one to be brought before a committee, as there was only a majority of four;—but that an act of God, which could neither be foreseen nor prevented, had deprived his client of five of the most material witnesses, and had thus, without his fault, taken from him the means of substantiating his claim. He added, that as the fact would not be controverted, and timely notice had been given to the sitting member, in order to prevent the expenses of preparing his defence, he trusted the committee would be of opinion that his client had not acted in a manner either frivolous or vexatious. The counsel for the sitting member, after acknowledging the death of the five witnesses, said he was not instructed to press the committee to report in such a way as to entitle his client to costs. After the committee had inquired from the solicitor for the petitioner, whether he, or the petitioner, knew of the death of these five witnesses when the petition was renewed (it being a renewed petition), and the answer being in the negative, the committee determined that the petition did not appear to them frivolous or vexatious.

So, where the petitioners declined to produce

any evidence before the committee, and gave timely notice to the sitting members or their Petitions in agent of such their intention, the committees, general. in the following cases, reported that the petitions were not frivolous or vexatious.

Shaftesbury, 1803.—The petitioners declined to produce any evidence in support of their petition. It appeared that they had given pre-evidence, and vious notice to the sitting members of such their previous intention.—The committee reported that the petition was petitions were not frivolous or vexatious.

I Peck. 18. Where petitioner declined to offer any had given notice, the holden not to be frivolous or vexatious.

Penryn, 1803, was to the same effect.

1 Peck. 251. Same point.

Evesham, 1803. The petitioner, Mr. Howorth, 1 Peck. 471. having given notice to the sitting members, that he did not mean to offer any evidence in support of his petition;—when the committee met. they were addressed by his counsel, stating the notice that had been given, that the sitting members were satisfied with the conduct of his client; and had agreed to give up any right they might have to call upon the committee to resolve that the petition was frivolous and vexatious. -The counsel, on the other side, did not ask for any such resolution.—The committee determined the sitting members to be duly elected;

Sect. 16. Petitions in general.

2 Peck 334. Where an elecpending a petition of appeal, and the election was petitioned against; the petition of appeal being decided only four days before the other petition heard, and that decision being against the right contended for hy the petitioners in the latter petition, they dence, but had given no previous notice to that effect: their petition frivolous or vexatious.

and that the petition was not frivolous or vexatious (a).

4th. Liskeard, 1804.—Mr. Sheridan petition took place tioned, stating that the majority of legal votes tendered themselves in his favor, the greater part of whom the mayor rejected, and returned Mr. Huskisson, by which means a double return had been made, when the petitioner alone should have been returned. There was also a other petition petition of certain inhabitants, stating (in substance) a former election (6th July, 1802) which had been petitioned against, and the decision of the committee upon the merits, and also upon the right of election; and further alleging, that offered no evi- there was a petition of appeal as to the right of election: that the latter stood for consideration on the 17th April; that (in the interval before its their petition was not holden trial, viz.) on the 9th March, the election then in question took place upon a vacancy; that the petitioners and others claiming a right to vote at the election as inhabitants paying or liable to pay scot and lot, tendered their votes for Mr. Sheridan, and that he ought to have been returned, and therefore praying, that "in case the petition of right, now pending before the house.

> (a) See also the case of the case of Bishop's Castle, Inverness, post, 344. But see ante, 324.

should be decided in favor of the petitioners, and those claiming to vote as inhabitants of the Petitions in said borough of L., paying or liable to pay scot and lot, the election of Mr. Huskisson (who had been returned by the mayor and burgesses) might be declared null and void; and that Mr. Sheridan might be declared to have been duly elected, and that the return might be amended accordingly."

Both these petitions were ordered for consideration on the 23d April, 1804; but having been deferred, they did not come on till the 15th May.

On the 11th May, the committee of appeal 2 Peck. 316. made their report, declaring the right of election to be in the mayor and burgesses.

The petitioners upon these petitions declining to produce any evidence in support of their petitions, the petitioners' counsel thereupon applied to the committee that they might be voted frivolous and vexatious, or at least vexatious.— After the counsel had been heard (a) on both

(a) On the behalf of the petitioners, it was argued that when the petitions were presented, the question was the tious, had occupied the atsame as that before the select tention of the committee for

committee in 1803; that the petitions at that time, so far from being frivolous or vexa-

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sides, the committee (after resolving that Mr. Huskisson was duly elected) determined that the petitions were not frivolous or vexatious.

With respect to parties opposing petitions:

Select committees to report sition to peor vexatious.

The above clause of the stat. 28 Geo. 3. c. whether oppo- 52. § 18. (a) directs that the select committee tition frivolous shall report with respect to every party or parties who shall have appeared before them in opposition to the petition, whether the opposition of such party or parties respectively did

> many days; that not even an attempt was made to induce the committee to vote them frivolous or vexatious; that if those were not so, the present could not be. The circumstance of the petition of appeal having been pending at the time of the election was adverted to, and that the petitioners, till that was decided, were confident of success. It was urged that the petitioners not having given notice of not intending to offer evidence in support of the petition, had not occasioned any great expense to the other side. Moreover, it was observed, that if the committee should consider the conduct of the petitioners to have been in any degree vexatious, the act 28 Geo. 3. c. 52. § 18 and 19. would not warrant them in pronouncing

the petitions to be so; that the words of the statute are not the "conduct of the parties," but only the "petition," and the words of a penal law cannot be strained to a subject not obviously within them .--It was admitted, on the other side, that at the time the petitions were presented, there was probabilis causa litigandi, inasmuch as the former decision on the right of election might have been reversed on the appeal then pending. But it was insisted, that as soon as that appeal was decided, they ought to have given notice to Mr. Huskisson that they should give no evidence before the committee, that the petitions were not frivolous or vexa-

(a) For this stat, see ante.

or did not appear to them to be frivolous or vexations.

Petitions in general.

And by § 20 (a) of the same act, whenever Wherever comany such committee shall report to the house, that the oppothat such opposition appeared to them to be tition is frivofrivolous or vexatious, the person or persons tious, petitionhaving signed the petition are to be intitled to tled to costs. recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expenses which such petitioner or petitioners shall respectively have incurred in prosecuting their petition.

mittee report sition to a pelous or vexaers to be inti-

As to cases where no party opposes the petition:

It seems, that where no party appears before the committee in opposition to the petition, the committee cannot resolve that the opposition is frivolous and vexatious. As in the 3d Middlesex 2 Peck. 387,389. case, 1806, Mr. G. B. Mainwaring and certain It seems, that electors petitioned against the election of Sir F. Burdett, and stated that Mr. M. was entitled to petition, the the seat. Before the petition was to be taken into tee cannot deconsideration, Sir Francis Burdett sent a written opposition is declaration to the speaker, that he did not mean vexitious. to defend his election: whereupon, certain elec-

where no party appears in opposition to a select commitclare that the frivolous or

(a) For this stat. see ante, 82.

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tors petitioned the house to be admitted parties. in the room of Sir F. Burdett, which was ordered accordingly.—The petition was not heard in that session.-In the following session, Mr. Mainwaring renewed his petition, but the electors did not, nor did they enter into any recognizances. -The committee (after resolving Mr. Mainwaring to be duly elected) resolved the petition not to be frivolous or vexatious; and that the election was not vexatious or corrupt. counsel for the petitioners suggested, that the committee could not declare the defence to be frivolous or vexatious in this case, since no party appeared in opposition to the petition; and that the stat. 28 Geo. 3. c. 52. § 20. (a) refers only to the opposition made to the petitioners by any party, " who shall have appeared before the committee."

Where no party appears in opposition to petition, seare to declare whether the election or return, or the omission of a return, or the plained of, appeared to them rupt. vexatious or corrupt.

By the same statute 28 Geo. 3. c. 52. § 18. (b), if no party shall have appeared in opposition to lect ommittee the petition, the select committee are to report whether the election or return, or the alleged omission of a return, or the alleged insufficiency of a return complained of in the petition, did or insufficiency of did not appear to them to be vexatious or cor-

⁽a) For this stat. see ante, 32.

⁽b) For this stat, see ib.

It will be recollected, that if a person should have been returned under circumstances which Petitions in would make it impossible for him to uphold such election or return, the law has given him the means of withdrawing his pretensions; and in See ante. 95. such case it becomes his duty so to do, by giving regular notice, under the 28 Geo. 3. c. 52. \S 1. (a), of his intention not to defend his seat.

And by $\S 21$ (b) of the same act, whenever Wherever in in any case where no party shall have appeared party shall before the committee in opposition to the peti- in opposition tion, the committee shall report to the house, the committee with respect to the election or return, or to that the electhe alleged omission of a return, or to the al- or the insufleged insufficiency of a return complained of return comin the petition, that the same appeared to them that it apto be vexatious or corrupt, the person or per- peared to them vexatious or sons who shall have signed the petition are to be entitled to recover from the sitting member, ver costs from sitting member or members (if any), whose election or return shall be complained of in such petition (such sitting member or members not having given oppose petition. notice, as therein aforesaid, of his or their intention not to defend the same), or from any other person or persons whom the house shall have admitted, or directed to be made a party or parties to oppose such petition, the full costs and

cases where no have appeared to petition. shall report tion or return. ficiency of the plained of. corrupt, petitioners to recoor members, or from parties admitted by the house to

(b) For this stat. see ante, (a) For this stat. see ante,

Sect. 16. Petitions in general.

expenses which such petitioner or petitioners shall have incurred in prosecuting such petition.

1 Peck. 526. Where the sitting member was a minor at the time of the election, and due notice was given thereof tion and election; but the sheriff (who was related to the sitting member), though his disqualification was pointed out to bim, declared he would return him, and did so, and where the sitting member duly declared his intention of not defending the return, the election and return was held to be vexatious, but not corrupt.

In the case of Flintshire, 1797.—Mr. Lloud petitioned against the return of Sir Thomas Mostun, claiming that he had the greatest number of votes of those candidates who were legally at the nomina qualified to sit. Certain electors also petitioned. alleging that Sir T. M. was a minor; that the same was repeatedly stated to the sheriff (who was brother-in-law to Sir T. M.) and to the freeholders; and that it being pointed out to the sheriff that he could not legally receive Sir T. M. as a candidate, or return him to parliament, he declared he should return him, and accordingly did so. Previously to the appointment of the committee, Sir T. M. had notified to the speaker his intention not to défend his return, pursuant to the 28 Geo. 3. c. 52. The minority of Sir T. M. at the time of the election was proved, and also that public notice thereof was given, both at the nomination and at the election. committee resolved, that Sir Thomas Mostyn was not duly elected; and that John Lloyd, Esq. was duly elected, and ought to have been returned. They also resolved (after hearing counsel upon the question), that the election and return of Sir T. Mostyn did appear to them to have

been vexatious; but that it did not appear to them to have been corrupt.

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The stat. 28 Geo. 3. c. 52. § 22. (a) directs, Costs, on apthat in the several cases therein before men-speaker, to be tioned, the costs or expenses of prosecuting or persons herein. opposing the petition are to be ascertained in the following manner, viz. that on application made to the speaker, by any such petitioner or petitioners, or party or parties, as therein before mentioned, for ascertaining such costs and expenses, he is to direct the same to be taxed by two persons, of whom the clerk or clerk assistant of the house is always to be one, and one of the masters in chancery, one of the clerks in the court of king's bench, one of the prothonotaries in the court of common pleas, or one of the clerks in the court of exchequer (not being a member of the house) is to be the other.—And by stat. 53 Geo. 3. c. 71. § 10.(b) all reasonable costs (as between attorney and client) are to be allowed.

And by the same clause of the 28 Geo. 3. the This report to persons so authorized to tax such costs and ex-speaker, who penses are required to examine the same, and to tion, to deliver report the amount thereof to the speaker; who, to parties a certificate of on application to him, is to deliver to the party the amount of the costs.

be made to the is, on applicato parties a

(b) For this stat. see ante, (a) For this stat. see ante, 33. 58.

Sect. 16.

Petitions in general.

Persons taxing costs to be entitled to certain fees.

or parties a certificate, signed by himself, expressing the amount of the costs and expenses allowed in such report; the persons so taxing such costs, and reporting the amount thereof, being entitled to such fees as shall be from time to time fixed by resolution of the house (a).

The law has made several provisions with respect to the costs in the cases where parties are made liable to pay them.

Parties entilled to recover costs may demand the whole amount from any person or persons liable, and in case of non-payment may recover the same by action, &c. By the stat. 28 Geo. 3. c. 52. § 23. (b), the party or parties intitled to costs and expenses under the act, or the executors or administrators of such party or parties, may demand the whole amount thereof, so certified, as in the act is mentioned, from any one or more of the persons respectively, who are made liable to the payment thereof, in the several cases therein before mentioned, and in case of non-payment thereof may recover the same by action of debt, in any of his majesty's courts of record, at West-minster:—In which action it is to be sufficient for the plaintiffs to declare, that the defendant or defendants is or are indebted to him or them, (in the amount of the costs and expenses ascer-

How the plaintiff is to declare.

(b) For this stat. see ante, 34.

⁽a) See the resolution of the 2d July, 1813, ante, 201.

tained as before-mentioned,) by virtue of the act. And the certificate of the speaker, under his Petitions in signature, of such amount, together with an examined copy of the entries in the journals, of the resolution or resolutions of the committee journal, and or committees, are to be declared full and sufficient evidence in support of such action.

general. Speaker's certificate, with entries in resolution of committee, to be evidence in support of action, &c.

By the stat. 28 Geo. 3. c. 52. § 24.(a), where Persons the amount of such costs or expenses shall have whom costs been recovered from any person or persons, such recovered may person or persons may recover in like manner rateably from the other persons or any of them, (if such persons liable. there shall be,) who shall be liable to the payment of such costs or expenses a proportionable share thereof, according to the number of persons liable.

shall have been

The stat. 53 Geo. 3. c. 71. § 11. (b) empowers the persons authorized and directed by the thorized to speaker, in pursuance of the 28 Geo. 3. c. 52. empowered to or of that act, to tax such costs, expenses, or fees, and also, any master in chancery, or any justice of peace, to take affidavits relative to such costs, expenses, or fees, or the taxation or non-payment thereof, and to administer the oath for taking such affidavit.

tax costs, &c.

⁽a) For this stat. see ante, 34.

⁽b) For this stat. see ante, 58.

Sect. 16. Petitions in general. Persons swearing falsely in such affidavits, guilty of per-jury. In actions for recovery of costs, &c. the speaker's certificate to have the effect of a warrant of attorney.

Court, on production of cerjudgment for the sum specified in such certificate to be due from defendant or defendants, in upon a warrant of attorney to that amount.

And by the same clause, persons convicted of wilfully false swearing in any such affidavit or affidavits are liable to the penalties of wilful and corrupt perjury.

The stat. 53 Geo. 3. c. 71. § 13. (a) enacts, that in any action, which shall be commenced for the recovery of any costs, expenses, or fees, which shall have been certified by the speaker in pursuance of that act, or that of 28 Geo. 3. c. 52, to be due and payable, the certificate so signed tificate, to enter by him is to have the force and effect of a warrant of attorney to confess judgment; and the court in which such action shall be commenced is upon motion, and on the production of such like manner as certificate, to enter up judgment for the sum specified in such certificate to be due from the defendant or defendants in such action, in like manner as if such defendant or defendants had signed a warrant to confess judgment in such action to that amount.

> The following points have been decided in actions, which have been brought for the recovery of costs in respect of election petitions.

Sir Henry Strachey, Bart. and another, v. Tur-

⁽d) For this stat, see ante, 59.

ley, and others, T. T. 46 Geo. 3. K. B.-There were two several petitions, signed by different per- Petitions in sons, presented to the house of commons against the return of members to serve in parliament for the borough of East Grinstead, which petitions were referred to the same select committee for trial, who reported them both to be frivolous and vexatious:—It was holden that the costs cannot be taxed jointly, under the stat. 28 Geo. 3. c. 52; and, therefore, the speaker, having first certified a joint taxation of costs for a certain sum against all the petitioners, and having afterwards, by an amended certificate, apportioned how much of the first mentioned sum taxed was incurred by the sitting members, in opposing the two petitions jointly, and how much was so incurred by them in opposing each separately; the plaintiffs, by the advice of the court, (after argument upon the case, reserved for their opinion) submitted to enter nonsuits, as well in two several actions prosecuted against the respective petitioners, for the separate costs, certified against each, as also in a joint action against all, to recover the taxation certified against them all jointly.

Sect. 16. 7 East. 507. Costs in respect of several petitions relating to the same election cannot be taxed jointly, under the 28 Geo. 3. c, 52.

There was afterwards (E. T. 49 Geo. 3. K.B.) 11 East, 194. another action, by and against the same parties, ficates as to in which it was holden, that both these cer- been granted

Invalid certiby speaker, a

Sect. 16. Petitions in general. new and valid certificate may nevertheless be granted; and this by the speaker of a new parliament.

tificates being invalid, by reason that the act only authorizes the costs to be taxed separately on each distinct petition, a new and valid certificate, ascertaining the separate costs incurred on each petition, might be granted by the speaker of a new parliament, the act mentioning the speaker generally.

4 Maule and Selwyn, 234. Where there is a petition against the return of a member, and also charging the returning officer with corruption and bribery, if the returning officer attend by his counsel, and the committee report the charges frivolous and the returning officer obtain the speaker's certificate, &c. debt lies for such costs.

Trueman v. Lambert, T. T. 55 Geo. 3. K. B. It was holden that, upon a petition to the house of commons against a return of a member, and also charging the returning officer with corruption and bribery, if the returning officer attend by his counsel and agent before the select committee, and bring witnesses to defend himself against those charges, and the committee report that the charges appeared to them frivolous and vexatious, which resolution is entered in the revolues and journals, and the returning officer obtains the speaker's order and certificate, pursuant to stat. 28 Geo. 3. c. 52, ascertaining the amount of his costs and expenses, debt lies at his suit to recover them.

SECTION 17. Scotland.

THE different provisions which have been mentioned in this chapter apply also in respect of petitions relating to elections for places in Scotland.

Petitions in general.

In addition to the cases wherein petitions have or have not been reported frivolous or vexatious, there have been the following:

County of Sutherland. Mr. Gordon and Mr. 2Fras. 157, 173. Mac Lead had petitioned the house against the return of Lieutenant General Grant. evidence, on which the case of Mr. Gordon tition being principally depended, having been held by the missible, and committee to be inadmissible, his counsel with- upon such dedrew any pretension to the seat, and there-drew his prefore gave the committee no farther trouble. petition was After this, the counsel on behalf of Mr. Mac be frivolous or Leod also said, that he had no evidence to offer to the committee, his intention being to petitioning bring the merits of Mr. Mac Lead's petition for another petiward only in the event that General Grant was evidence, dedeclared ineligible. Upon this, the counsel for tention of General Grant applied to the committee, under ward only in the above act, by a special report to award costs other petito his client; and, after referring to the preceding ing, the petition case of Bodmin, he further stated, that another frivolous committee, in the late case of Colchester, came to a similar determination, the petition being mistaken in law as to the ineligibility of Sir John Jackson, on account of a supposed pension.

Where the evi-The dence in support of the peholden inadthe petitioner cision withtensions, the holden not to vexatious. But where a candidate upon tion offered no claring his incoming forthe event of the

Petitions in general.

The committee determined that the petition of Mr. Mac Leod did appear to them to be frivolous and vexatious. They further determined, that the petition of Mr. Gordon did not appear to them to be frivolous or vexatious.

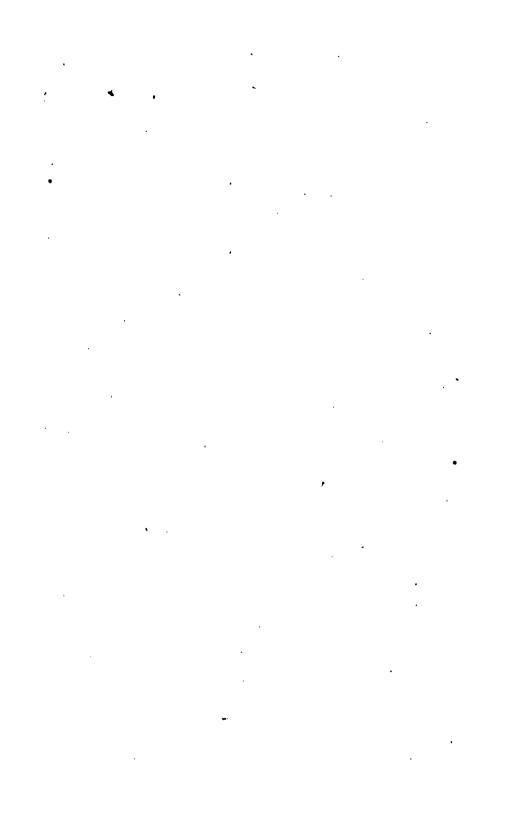
1 Peck, \$51, ante, 329.
Where petitioners declined offering evidence, and gave previous notice thereof to sitting member, petition holden not frivolous or vexatious.

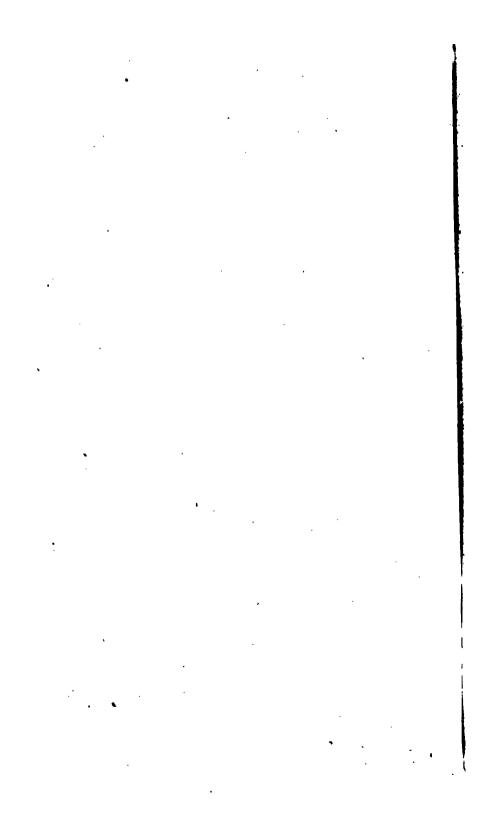
The case of *Inverness*, 1803, may be added to those, where the petitioners declining to produce any evidence before the committee, and giving timely notice to the sitting members, the petitions have been reported not to be frivolous or vexatious.

SECTION 18. Ireland.

App. eccxxxviii. ecclxxix. THERE are so many peculiarities, under the provisions of the statutes 42 Geo. 3. c. 106, and 47 Geo. 3. c. 14, with respect to the proceedings of select committees, in respect of *Irish* petitions, that it becomes eligible to make them the subject of a separate chapter.

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